

C O N F I D E N T I A L  
UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION

VOLUME I

LIGGETT GROUP, INC.

PLAINTIFF

-against-

BROWN & WILLIAMSON TOBACCO  
CORPORATION

DEFENDANT

BROWN & WILLIAMSON TOBACCO  
CORPORATION

PLAINTIFF

- against-

LIGGETT GROUP, INC. and  
GENERIC PRODUCTS CORPORATION,

COUNTERCLAIM-DEFENDANTS

CIVIL ACTION  
NO. C 84-617-D

\* \* \* \* \*

DEPONENT: GERALD GREENIER

DATE: February 6, 1986

REPORTER: MARCIA KUCHENBROD

\* \* \* \* \*

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P24 20151

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ALSO PRESENT:

John E. Jenkins  
Webster & Sheffield

\* \* \* \* \*

The deposition of GERALD GREENIER was taken on behalf of the Plaintiff, before Marcia Kuchenbrod, Notary Public for the State of Kentucky at Large, in the offices of Woodward, Hobson & Fulton, 2500 First National Tower, Louisville, Kentucky, on February 6, 1986, at 9:30 a.m. Said deposition was taken pursuant to notice for purposes of discovery and as provided by the Federal Rules of Civil Procedure.

\* \* \* \* \*

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CONFIDENTIAL MINNESOTA TOBACCO LITIGATION

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IT IS HEREBY STIPULATED AND

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AGREED, by and among the attorneys for the respective parties herein, that the sealing and filing of the within deposition be waived; that such deposition may be signed and sworn to before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the officer before whom said deposition is taken.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to form, are reserved to the time of trial.

\* \* \* \* \*

1 GERALD A. GREENIER,  
2 called upon oral examination by counsel for the  
3 plaintiff, after having been first duly sworn, was  
4 examined and deposed as follows:

5 DIRECT EXAMINATION

6 BY MR. RASMUSSEN:

7 Q. Will you please state your name?

8 A. Gerald A. Greenier.

9 Q. Where do you live, Mr. Greenier?

10 A. REDACTED

11  
12 Q. And you are employed by B&W, by  
13 Brown & Williamson?

14 A. Yes.

15 Q. And what is your office address?  
16 Is it in Louisville, Kentucky?

17 A. Yes.

18 Q. Okay. If you don't understand  
19 any of my questions, let me know and I'll try to  
20 rephrase them.

21 When were you first employed by  
22 B&W?

23 A. 1971.

24 Q. What was your first job at Brown  
25 & Williamson?

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Redacted information not available for public review  
because of individual privacy concerns.

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1 A. Sales rep.  
2 Q. What area?  
3 A. In 1971?  
4 Q. Yes. What geographic -- were  
5 you a sales rep for a geographic region?  
6 A. Los Angeles, California.  
7 Q. Okay. And how long did you have  
8 that job, how long were you a sales rep in Los  
9 Angeles, California?  
10 A. Six months.  
11 Q. Okay. Then what happened?  
12 A. I was moved to Boston.  
13 Q. And what did you do -- what was  
14 your job there for B&W?  
15 A. Sales representative.  
16 Q. For the Boston district?  
17 A. Southeastern Massachusetts.  
18 Q. Okay. How long were you there  
19 in that job?  
20 A. Five years.  
21 Q. Okay. From '71 to '76 about?  
22 A. (Affirmative nod.)  
23 Q. What happened in 1976, what job  
24 did you take then?  
25 A. Division manager.

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1 Q. Where were you located for that  
2 job?

3 A. Springfield, Massachusetts.

4 Q. How long were you division  
5 manager, how long did you hold that job?

6 A. Until June of 1978.

7 Q. Then what did you do?

8 A. Promoted to division manager.

9 Q. Where were you headquartered as  
10 division -- I thought you just were division manager?

11 A. I was.

12 Q. Then you got promoted to a  
13 different type of division manager?

14 A. A higher division manager.

15 Q. Okay. What division manager did  
16 you get promoted to in 1978?

17 A. Alexandria Virginia.

18 Q. And before that you were  
19 division manager for what division?

20 MR. PECK: Asked and answered,  
21 but --

22 Q. Springfield, that was the  
23 southeast Massachusetts whatever?

24 A. No. Springfield.

25 Q. Springfield, okay. How long

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1 were you in Alexandria as division manager?

2 A. Six months.

3 Q. Then where did you go, next job?

4 A. Philadelphia?

5 Q. Division manager?

6 A. Region manager.

7 Q. Starting in about 1979?

8 A. Yes.

9 Q. What region were you the manager  
10 of?

11 A. Baltimore. Washington.

12 Q. How long were you region manager  
13 of Baltimore, Washington?

14 A. Until October '79.

15 Q. And then what did you do?

16 A. Key accounts manager.

17 Q. What accounts were you the key  
18 accounts manager for? Is there a great number of  
19 accounts?

20 A. Yes.

21 Q. Okay. How long did you have  
22 that job?

23 A. Until March of 1981.

24 Q. And then what did you do?

25 A. Promoted to department manager.

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1 Detroit.

2 Q. The Detroit department?

3 A. Uh-huh.

4 Q. And just generally what were  
5 your responsibilities as the department manager of the  
6 Detroit department?

7 MR. PECK: Object as beyond the  
8 scope of this examination, but since I presume you're  
9 just doing it for background, you can answer it.

10 MR. RASMUSSEN: That's right.

11 MR. PECK: To the extent you can  
12 answer a vague question like that.

13 A. Responsibilities included, not  
14 limited to the sales of Brown & Williamson product in  
15 the Detroit department.

16 Q. Did you monitor sales reps?

17 A. Yes.

18 Q. Okay. And you monitored  
19 competitive activity in the division?

20 MR. PECK: Objection. I don't  
21 know what you mean by monitored either in this  
22 question or the last question for that matter. Can  
23 you rephrase it, please?

24 Q. Do you know what monitored  
25 means?

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1 A. I'm not sure what you mean when  
2 you say monitored sales reps.

3 Q. They reported to you, they  
4 submitted weekly or monthly reports to you?

5 A. Directly?

6 Q. Yes.

7 A. No.

8 Q. Did you get weekly reports or  
9 monthly reports, daily reports from anybody in that  
10 job?

11 A. Yes.

12 Q. Who did you get those reports  
13 from?

14 A. Division managers.

15 Q. And would those reports  
16 summarize competitive activity such as sales of  
17 generics by Liggett & Meyer Tobacco Company?

18 MR. PECK: Objection as to the  
19 form. Compound. Break it up, please.

20 A. I'm not -- I'm still not sure  
21 what you're asking.

22 Q. It's going to be a long day if  
23 we can't even get through the background.

24 B&W has damage claims starting  
25 from 1981. I'm simply trying to find out -- actually

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1 1980 -- whether you monitored or were aware of or paid  
2 attention to Liggett sales of generics when you were  
3 department manager for the Detroit department?

4 A. Aware of?

5 Q. Yes.

6 A. Yes.

7 Q. And did the reports you received  
8 mention Liggett sales of generics from time to time?

9 A. I don't really remember.

10 Q. Okay. How long were you  
11 department manager for the Detroit department?

12 A. Until July of '83.

13 Q. And then what happened?

14 A. I was promoted to Louisville,  
15 manager of sales planning.

16 Q. Okay. How long were you manager  
17 of sales planning?

18 A. Six months.

19 Q. Okay.

20 A. Approximately.

21 Q. And then what was your next job?

22 A. National accounts manager.

23 Q. You became national accounts  
24 manager about December of '83?

25 A. No. February of '84.

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- 1 Q. Okay. How long were you  
2 national accounts manager?
- 3 A. Till October of this year.
- 4 Q. Okay.
- 5 A. '85.
- 6 Q. October '85?
- 7 A. Yes.
- 8 Q. Then what happened to you?
- 9 A. Promoted to director of generic  
10 sales.
- 11 Q. Is that your current job?
- 12 A. Yes.
- 13 Q. As manager of sales planning did  
14 you have any responsibilities concerning the  
15 possibility of B&W marketing generic cigarettes?
- 16 A. No.
- 17 Q. Did you as national accounts  
18 manager?
- 19 A. When you say responsibility,  
20 what do you mean responsibility?
- 21 Q. Well, let me rephrase the  
22 question. Did you play any role in considering  
23 whether B&W should enter the generic segment of the  
24 marketplace when you were manager of sales planning?
- 25 A. Considering, no.

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1 Q. You had nothing to do with  
2 generics when you were manager of sales planning?  
3 A. Not true.  
4 Q. What did you have to do with  
5 generics?  
6 A. Research.  
7 Q. Okay. What did you research?  
8 A. The segment, the generic  
9 segment.  
10 Q. And tell me how you did that.  
11 A. Trade journals.  
12 Q. Did you do anything other than  
13 read trade journals?  
14 A. Field surveys.  
15 Q. Anything else?  
16 A. Internal documents that we may  
17 have had.  
18 Q. Did you prepare some internal  
19 documents?  
20 A. No.  
21 Q. Did you read some internal  
22 documents prepared by others?  
23 A. Yes.  
24 Q. Did you edit any of those  
25 internal documents?

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1 A. Edit?

2 Q. Change the wording?

3 A. No.

4 Q. Or send them back for further

5 research?

6 A. Yes, I may have.

7 Q. Okay. Do you remember the names

8 of any of those internal documents that you would have

9 seen?

10 MR. PECK: Objection to the form

11 on the would have seen. Ask what he saw.

12 Q. Did see?

13 A. Restate the question, again.

14 Q. Can you remember any of the

15 internal documents you saw which pertained to

16 generics?

17 A. Only one in particular may have

18 been switching studies.

19 Q. Okay. Does the expression white

20 paper mean anything to you in the context of internal

21 documents concerning generics?

22 A. Yes.

23 Q. Did you work on any white

24 papers?

25 A. Did I work on any?

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- 1 Q. Yes.
- 2 A. No.
- 3 Q. Did you read any?
- 4 A. No.
- 5 Q. Did you ask others to -- any
- 6 other employees to help prepare any white papers?
- 7 A. Yes.
- 8 Q. And who did you ask?
- 9 A. Jan Tharaldson.
- 10 Q. What is your understanding of a
- 11 white paper?
- 12 A. Research paper.
- 13 Q. Okay. How many white papers did
- 14 you ask her to work on?
- 15 A. One.
- 16 Q. Did that white paper have a
- 17 name?
- 18 A. To my knowledge, no.
- 19 Q. Do you know what it was used
- 20 for?
- 21 A. No, I do not.
- 22 Q. Now, I'm still talking about the
- 23 time period when you were manager of sales planning?
- 24 A. Uh-huh.
- 25 Q. Did Jan Tharaldson report to you

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1 at that time?

2 A. Yes.

3 Q. And who else reported to you at  
4 that time?

5 A. Alice Robinson, Sharon Smith,  
6 Joe Hender.

7 Q. Did they report to you in the  
8 entire time that you were manager of sales planning?

9 A. All of them?

10 Q. Yes.

11 A. No.

12 Q. Okay. As I understand it, you  
13 asked Jan Tharaldson to study the generic segment of  
14 the marketplace; is that correct?

15 MR. PECK: Objection. If you're  
16 summarizing his testimony, that's not what he said.

17 Q. You can answer the question.

18 A. No. She worked for me. She was  
19 assisting me.

20 Q. Analyzing the generic market?

21 A. Analyzing, what do you mean by  
22 that?

23 Q. Studying it?

24 A. Yes.

25 Q. Did Alice Robinson help in any

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1 way studying the generic market?

2 A. No.

3 Q. Did you all --

4 A. Not that I remember.

5 Q. Okay. How about Joe Hender?

6 A. Not that I remember, no.

7 Q. Okay. Did anyone else -- are  
8 you aware of anyone else at B&W that was studying the  
9 generic market when you were manager of sales  
10 planning?

11 A. Yes.

12 Q. Who?

13 A. Ted Parrack.

14 Q. Okay.

15 A. Frank Schoenheiter. That's all  
16 I can remember at this point.

17 Q. What was Ted Parrack doing with  
18 respect to generics?

19 A. I'm not sure.

20 Q. You just know he was doing  
21 something?

22 A. Yes.

23 Q. Did you report to Ted Parrack  
24 at all in anything to do with generics?

25 A. No.

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1 Q. What about Frank Schoenheiter?  
2 A. No.  
3 Q. Do you know what he was doing  
4 with respect to generics?  
5 A. Researching for a brief period  
6 of time.  
7 Q. What was that period of time?  
8 A. Two, three days.  
9 Q. What was he researching?  
10 A. Generic segment of the cigarette  
11 industry.  
12 Q. Was he working for you for those  
13 two or three days?  
14 A. No.  
15 Q. Did he report to you on what his  
16 research was about?  
17 MR. PECK: Are you using report  
18 in the line sense or report in the sense of talk  
19 about?  
20 Q. Tell you?  
21 A. Yes.  
22 Q. What did he tell you?  
23 A. I don't really remember.  
24 Q. Okay. Was he working with Jan  
25 Tharaldson?

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1 A. No.

2 Q. Had you asked him to find some  
3 information out about something in the generic segment  
4 of the market?

5 A. No.

6 Q. Can you recall anyone else that  
7 was -- had any involvement with studying the generic  
8 market when you were manager of sales planning?

9 A. No.

10 Q. Okay.

11 A. I don't remember anyone else.

12 MR. PECK: Could I hear the  
13 question back, please?

14 (The reporter read the record.)

15 MR. PECK: Let me just see if  
16 we're thinking on the same lines, Garret.

17 MR. RASMUSSEN: Okay.

18 MR. PECK: There was already  
19 mention of the switching studies. I don't know if you  
20 considered that in that question or not. You may want  
21 to clarify that.

22 Q. What were your responsibilities  
23 with respect to switching studies?

24 A. The switching studies were given  
25 to me as part of my research.

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1 Q. Okay. What did you do with the  
2 switching studies?

3 A. Reviewed them with senior  
4 management.

5 Q. And who in senior management did  
6 you review them with?

7 A. Dick Blott, Lanny Butler, Don  
8 Christensen, Don Johnston, and I believe Charlie  
9 Middleton.

10 Q. Okay. You had mentioned the  
11 white paper earlier. Do you recall that, the white  
12 paper on generics?

13 A. I mentioned the white paper?

14 Q. You said it meant something to  
15 you; Jan Tharaldson was working on a white paper?

16 A. Okay.

17 Q. Did you discuss that white paper  
18 with either Dick Blott or Lanny Butler or Don  
19 Christensen or Don Johnston or Charlie Middleton?

20 MR. PECK: Objection to the  
21 form. That assumes there was such a white paper.

22 A. No.

23 Q. Did you discuss generic --  
24 anything else about generics other than the switching  
25 studies with any of the following people; Dick Blott,

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1 Lanny Butler, Don Christensen, Don Johnston or Charlie  
2 Middleton?

3 A. Did I discuss what?

4 Q. Anything else about generic  
5 cigarettes with any of those people?

6 A. Yes.

7 Q. What else?

8 A. Different labels that were out  
9 there.

10 Q. Anything else?

11 A. There probably was. I really  
12 can't remember.

13 Q. Packaging? Did you discuss  
14 packaging with them?

15 A. To the degree of the different  
16 labels.

17 Q. Okay. Did you discuss packaging  
18 designs that B&W might use for its generic cigarettes?

19 A. No.

20 Q. Did you play any role in the  
21 selection of the packages which B&W actually used for  
22 generic cigarettes?

23 A. No.

24 Q. You just found out what labels  
25 already existed for generic cigarettes?

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1 A. I just found out?  
2 Q. Did you do anything else other  
3 than that?

4 A. No.

5 Q. Okay. So as I understand it,  
6 you studied -- you received switching studies, which  
7 then you discussed with others, and you collected  
8 package labels for generics; is that right?

9 A. Correct.

10 Q. You read trade journals?

11 A. Correct.

12 Q. You supervised field surveys; is  
13 that right?

14 A. Supervised, what do you mean by  
15 supervised?

16 Q. Well, what did you do with  
17 respect to field surveys?

18 A. Submitted them out to the field  
19 for them to return to me.

20 Q. Okay. Other than those things  
21 did you have any other activities involving research  
22 or studying of the generic markets?

23 MR. PECK: You mean other than  
24 the other things he already testified about?

25 Q. Yes, other than what you have

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1 already mentioned here?

2 A. During what time frame?

3 Q. As manager of sales planning?

4 A. I may very well have. I really  
5 don't remember anything in particular at this point.

6 Q. Okay. Then when you became  
7 national accounts managers -- excuse me, national  
8 account manager in February 1984, in that job did you  
9 do anything relating to generic cigarettes?

10 A. Yes.

11 Q. What did you do then?

12 A. Made some sales calls.

13 Q. On which accounts?

14 A. Fontana Brothers.

15 Q. Can you think of any others?

16 A. Schiller, Incorporated,  
17 Albertson's. Just for the purpose of generics we're  
18 talking about?

19 Q. Yes.

20 A. That's all I can remember at  
21 this point.

22 Q. Okay. Is it possible you might  
23 have called on some other accounts to try to sell or  
24 get them interested, to try to sell generic  
25 cigarettes?

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22

1 MR. PECK: Anything is possible.  
2 Can you rephrase the question?

3 Q. Do you recall discussing generic  
4 cigarettes with any other accounts?

5 A. Yes.

6 Q. What other accounts?

7 A. Safeway Portland, Peoples  
8 Drugstores, Stop & Shop. That's all I can remember.

9 Q. Okay.

10 A. Off the top of my head.

11 Q. What is the most recent call you  
12 have made on a customer in which you have discussed  
13 generics?

14 MR. PECK: Objection. Are we  
15 talking about when he was national accounts manager or  
16 his job subsequent?

17 Q. When he was national accounts  
18 manager?

19 MR. PECK: Okay. So you're  
20 asking for the period February '84 to October '85  
21 approximately when he was national accounts manager,  
22 which was the last one he made, last call he made?

23 MR. RASMUSSEN: Yes.

24 MR. PECK: It seems like a  
25 peculiar way to start, but okay.

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1 A. Through October '85?

2 Q. Let me rephrase it. Were you  
3 making calls on accounts throughout the period that  
4 you were national accounts manager?

5 A. Making calls on accounts?

6 Q. Yes.

7 MR. PECK: For generics or other  
8 purposes?

9 Q. With respect to generics -- at  
10 which generics were discussed?

11 A. At which generics were  
12 discussed?

13 Q. Yes.

14 A. Yes.

15 Q. Okay.

16 Q. What other responsibilities --  
17 what other activities did you do that involved  
18 generics when you were national accounts manager?

19 A. Other, other than --

20 Q. Calling on accounts?

21 A. I don't remember.

22 Q. Okay. Were you involved in any  
23 considerations about what B&W should charge for  
24 generic cigarettes at that time?

25 A. Not that I can remember.

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1 Q. Were you involved in any  
2 discussions concerning incentives that should be  
3 offered for generic cigarettes within B&W itself?

4 A. Not that I can remember.

5 Q. Were you involved in any  
6 discussions about whether B&W should undertake  
7 stickering with respect to generic cigarettes while  
8 you were a national accounts manager?

9 A. I may have been, but I don't  
10 really remember any in particular.

11 Q. As national accounts manager  
12 what portion of your activities involved generics,  
13 generic cigarettes?

14 MR. PECK: Objection to the  
15 form. Do you mean what percent of his time was spent  
16 on it?

17 MR. RASMUSSEN: Yes.

18 A. Very small.

19 Q. Okay. Who reported to you when  
20 you were national accounts manager with respect to  
21 anything to do with generics?

22 A. No one.

23 Q. Okay. As national account  
24 manager did you make any reports to anyone else that  
25 concerned generics?

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1 MR. PECK: Do you mean regularly  
2 or ever?

3 MR. RASMUSSEN: Written, written  
4 reports?

5 MR. PECK: Ever or regularly?

6 MR. RASMUSSEN: Ever?

7 A. Yes, I may have.

8 Q. Okay. Did you regularly do  
9 that?

10 A. No, not that I remember, no.

11 Q. When you say you may have, do  
12 you recall any times when you did?

13 A. Maybe in a status report, a one  
14 line comment. I don't remember anything in  
15 particular.

16 Q. Okay. Are you aware of any  
17 instance when B&W has offered a customer an incentive  
18 payment or any other type of payment that was not  
19 offered to any other customer, to every other  
20 customer?

21 MR. PECK: First of all, just so  
22 we're clear, as you know from prior depositions all  
23 questions should be limited to the period prior to and  
24 including August 31, 1985.

25 Also I'd like to hear the

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26

1 question back because I'm not sure I understand it.

2 MR. RASMUSSEN: Well, we don't  
3 agree that all questions should be limited to that  
4 period.

5 MR. PECK: I know you don't  
6 agree.

7 MR. RASMUSSEN: Will you  
8 instruct the witness not to answer questions beyond  
9 that time period?

10 MR. PECK: That's correct, as  
11 has been the consistent practice.

12 MR. RASMUSSEN: So there's no use  
13 for me to ask those questions and have you object --  
14 the issue is right for decision by someone else  
15 without me having to ask the questions?

16 MR. PECK: Correct.

17 Q. Okay. Putting that time period  
18 aside, in the time period which I'm allowed to  
19 question you on at the magnanimity of your lawyers,  
20 are you aware of any instances when anyone at B&W  
21 including yourself may have offered a customer a price  
22 or an incentive that was not offered to every other  
23 customer?

24 A. What do you mean by incentive?

25 Q. Oh -- do you know what incentive

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3

1 means?

2 A. Numerous definitions. I'm not  
3 sure.

4 Q. Okay. When you use the term  
5 incentive, what do you mean?

6 A. A prize award for someone doing  
7 a good job.

8 Q. With respect to generics?

9 A. I don't know of any as -- apply  
10 to generics.

11 Q. What -- you're not familiar with  
12 any incentives that B&W gave to customers with respect  
13 to generics?

14 A. Again, by what definition is  
15 incentives?

16 Q. Your definition?

17 A. Prize award, no.

18 Q. Okay. You have never used  
19 the -- heard the term incentives used with respect to  
20 generics other than for prize award?

21 A. No.

22 Q. In your entire career at B&W you  
23 have never heard anyone mention incentives with  
24 respect to generics?

25 A. Not that I remember.

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1 Q. You have never seen a document  
2 that mentions incentives with respect to generics?

3 A. Not that I remember.

4 Q. Okay. Is it your understanding  
5 that there were -- that B&W never offered any  
6 incentives for generic cigarettes?

7 A. Again, incentives in what  
8 terminology?

9 Q. In your terminology as you used  
10 it -- the term in the regular course of your business?

11 A. Not that I remember.

12 Q. Are you aware that B&W offered  
13 volume rebates to customers for generic cigarettes?

14 A. Volume rebates, what --

15 Q. Does the expression volume  
16 rebates mean anything to you?

17 A. Yes.

18 Q. What does it mean to you?

19 A. Customers at different volume  
20 levels got different rebates.

21 Q. Okay. Are you aware that B&W  
22 offered volume rebates to any customers?

23 A. Yes.

24 Q. Have you ever heard of the term  
25 prompt signing bonus?

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1 A. Yes.

2 Q. Are you aware that B&W ever  
3 gave -- ever offered prompt signing bonuses to  
4 customers for generics?

5 A. I believe so, but I'm not really  
6 sure.

7 Q. Okay. So at least we've got a  
8 definition now, or we can talk to each other about  
9 volume rebates because we have a common understanding  
10 what they are.

11 Q. Are you aware of any other price  
12 reductions that B&W has offered to customers?

13 MR. PECK: Objection to the form  
14 of the question.

15 A. Price reductions, I'm not sure  
16 what you mean.

17 Q. Well, a customer buys cigarettes  
18 from B&W, correct?

19 A. Correct.

20 Q. Okay. He pays a price, he pays  
21 money, right?

22 A. Correct.

23 Q. And there's a list price for the  
24 cigarettes, right?

25 A. Correct.

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1 Q. But the customers don't always  
2 pay the list price, do they?

3 A. As far as I know they pay the  
4 list price.

5 Q. Okay. And then depending -- the  
6 customers also receive payments from B&W if -- which  
7 in effect reduces the list price to them, isn't that  
8 right?

9 A. When you say payments --

10 Q. A volume repate?

11 A. They receive volume rebates from  
12 us, yes.

13 Q. Do they receive anything else  
14 from you?

15 MR. PECK: What time period are  
16 we talking about?

17 Q. In the time period when you were  
18 national account manager?

19 A. Yes.

20 Q. What else?

21 A. Promotion allowances.

22 Q. Anything else? We're talking  
23 generics now?

24 A. Yes. Not that I know of.

25 Q. Okay. Within the definition

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1 of --

2 A. Or that I remember, let's put it  
3 that way.

4 Q. Okay. What promotional  
5 allowances are you aware that B&W paid to customers  
6 when you were a national accounts manager?

7 A. What promotional allowances?

8 Q. Yes.

9 A. Only that we had a promotion  
10 allowance as part of our rebate.

11 Q. Okay. What was that promotional  
12 allowance that was part of your rebate?

13 A. Are you talking amount or --

14 Q. What's your understanding of  
15 what -- now -- what it was and how it worked?

16 A. The customer would have to do  
17 different activities.

18 Q. What would a customer have to  
19 do?

20 A. Sticker product I believe was  
21 part of it.

22 Q. Have you ever heard of the  
23 term -- can you think of any other promotion  
24 allowances or any other promotion allowances that B&W  
25 offered?

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1 A. I don't remember any.

2 Q. Now, you said that you were  
3 familiar with something called a prompt contract  
4 bonus; is that correct?

5 MR. PECK: I think he said a  
6 prompt signing bonus.

7 Q. Okay. Are you familiar with  
8 something called a prompt contract --

9 A. I have heard of it.

10 Q. Okay. Do you consider that a  
11 promotion allowance?

12 A. Do I consider it, no.

13 Q. What do you call that? How do  
14 you classify it, if you classify it?

15 A. A sign-up bonus.

16 Q. Okay. During the time that you  
17 were national accounts managers did B&W offer a prompt  
18 signing bonus to customers?

19 A. I believe they did.

20 Q. During the entire time period?

21 A. I don't really know what the  
22 time frame was that they did it.

23 Q. Okay.

24 A. I don't remember.

25 Q. Okay. Does the term

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1 merchandising allowance mean anything to you with  
2 respect to generic cigarettes at the time that you  
3 were national account manager?

4 A. Yes.

5 Q. What does it mean to you?

6 A. I knew that Liggett & Meyers had  
7 a merchandising allowance, or had heard that.

8 Q. Did B&W have a merchandising  
9 allowance?

10 A. I don't really know.

11 Q. Did B&W have an annual plan at  
12 any time that you were -- a plan called an annual plan  
13 at any time that you were national --

14 MR. PECK: Something named a,  
15 quote, annual plan?

16 MR. RASMUSSEN: It might  
17 actually be named in the presentation that this same  
18 individual made, but we'll get to that later.

19 MR. PECK: Come on, Garret. If  
20 you have a document, why don't you show it to him?  
21 Let's not play games.

22 MR. RASMUSSEN: I'm not playing  
23 games. I'm just trying to see what he knows.

24 A. That I know of something called  
25 an annual plan?

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1 Q. Yes.

2 A. I don't remember of any.

3 Q. Okay. Would it surprise you if  
4 you had made a presentation in which you used the term  
5 annual plan?

6 MR. PECK: Objection. Come on,  
7 Garret. If you have a document that uses that word,  
8 give it to the witness so he can see the context of  
9 it. Don't play games and ask what anything would  
10 surprise him. That question is improper. Withdraw  
11 it, please.

12 Q. Answer the question, please.

13 MR. PECK: I instruct the  
14 witness not to answer that question. It's totally out  
15 of line. If you have a document, show it to him.

16 Q. Have you ever heard of a direct  
17 account incentive program that B&W offered?

18 A. Yes.

19 Q. Do you consider that to be a  
20 promotion allowance?

21 A. No.

22 Q. Have you ever heard of a 5  
23 percent bonus that B&W paid any customers for generic  
24 cigarettes?

25 A. No.

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1 Q. With respect to volume rebates,  
2 are you aware of any instance when B&W has paid a  
3 customer a higher volume rebate than the customer's  
4 volume qualified for?

5 A. Not that I remember.

6 Q. With respect to promotion  
7 allowances are you aware of any instance when B&W has  
8 paid a promotional allowance to at least one customer  
9 that was not offered to all customers?

10 A. I don't know of any. I don't  
11 remember.

12 Q. Are you aware of any offers that  
13 B&W has made to any customer of generic products which  
14 were not offered to all customers of generic products?

15 MR. PECK: I don't know what you  
16 mean by that.

17 A. I don't -- I'm not sure what you  
18 mean.

19 Q. What is the source of your  
20 confusion?

21 A. You said any offers.

22 Q. Yes.

23 A. Were made to some customers that  
24 weren't made to others?

25 Q. Right, right.

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1 A. If a customer had a different  
2 volume than another, they could very well have had a  
3 different volume rebate.

4 Q. But, of course --

5 A. We had a published offer.

6 Q. Right. So that would have been  
7 something offered to all customers then?

8 A. Fair, equal and proportionately --

9 Q. Yes.

10 A. -- according to volume?

11 Q. Yes.

12 A. To the best of my knowledge.

13 Q. You're not aware of any offer  
14 that was made that wasn't made available to all  
15 customers on a fair and equal and proportionate basis?

16 A. I am not aware of any, no.

17 Q. Okay. You had mentioned certain  
18 accounts which you had called on as national account  
19 manager, including Fontana Brothers, Schiller,  
20 Albertson, Safeway in Portland, Peoples Drugstores and  
21 Stop & Shop.

22 At any of those -- are you aware  
23 of any offer being made to any of those accounts that  
24 was not made on a fair and proportionate basis to all  
25 other customers?

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1 A. I am not aware of any.  
2 Q. Okay.  
3 MR. RASMUSSEN: Off the record.  
4 (Off the record discussion.)  
5 Q. Did you participate in any  
6 decision making process about whether B&W should enter  
7 the generic segment of the marketplace?  
8 A. Not that I remember.  
9 Q. Did anyone at B&W ask your  
10 opinion as to whether B&W should enter the generic  
11 segment of the marketplace?  
12 A. Anyone?  
13 Q. Yes.  
14 A. Yeah.  
15 Q. Who?  
16 A. I don't remember in particular.  
17 I mean, hallway conversations could have fit in there.  
18 Q. Okay. Were you at any meetings  
19 in which you were -- your opinion was asked with  
20 respect to whether B&W should enter the generic  
21 segment of the marketplace?  
22 A. I don't remember any.  
23 MR. RASMUSSEN: Okay. I'll ask  
24 the court reporter to mark as Greenier Deposition  
25 Exhibit 1 a document, first page of which bears

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1 production Number 88252.

2 (Greenier Exhibit 1 was marked  
3 for identification.)

4 (Off the record discussion.)

5 Q. Let me know once you have had a  
6 chance to look at that document, Mr. Greenier.

7 A. Okay.

8 Q. Do you recognize any of the  
9 handwriting on Exhibit 1?

10 A. No, I don't.

11 Q. Have you ever seen the typed  
12 portion of the document before, ignoring the  
13 handwriting?

14 A. I may very well have. I don't  
15 remember it in particular.

16 Q. Are your initials GAG?

17 A. Yes, they are.

18 Q. Did you ever -- and I'm looking  
19 with reference to point 8 -- did you ever examine the  
20 timing of a competitive manpower study?

21 A. I may very well have.

22 Q. What is a competitive manpower  
23 study?

24 A. Finding out how many field sales  
25 folks our competitors have.

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1 Q. Did you also in -- well, I won't  
2 say also -- did you in 1984 attain in-house research  
3 information for military VRP activity?

4 MR. PECK: VPR activity.

5 Q. Excuse me, VPR activity.

6 A. I may very well have. I don't  
7 remember in particular.

8 Q. What is resource information on  
9 military VPR activity?

10 A. I'm going to assume reading this  
11 document what it means is check with our special  
12 markets department which handles military accounts.

13 Q. And there's a reference to a  
14 follow up meeting on 1-13 down at numbered Paragraph  
15 11. Do you see that?

16 A. No. I see it says that it's  
17 a meeting -- I'm not sure that it says that --

18 Q. Okay.

19 A. -- or it says that the meeting  
20 is supposed to be for 2-4, February 4th, and I'm  
21 supposed to set it up on January 13th. Yeah, I see  
22 that. Do I remember doing it, no.

23 Q. Do you recall a meeting on  
24 either February 4th or on or about January 13th, 1984,  
25 concerning generics?

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1 A. I don't really remember any  
2 meeting specific for that on those two dates.

3 Q. Okay.

4 A. But that doesn't mean it didn't  
5 occur.

6 Q. Okay. I'll ask you to take a  
7 look at a document which I have premarked as -- which  
8 has already been marked as Tharaldson Exhibit 12.  
9 It's entitled Project G, Last Meeting Points List,  
10 and I'll ask you after you have had a chance to look  
11 at it whether you are familiar with it?

12 Let me add while you're reading  
13 that document that it bears production number 068603.

14 MR. PECK: And following  
15 numbers.

16 MR. RASMUSSEN: And following  
17 numbers.

18 MR. PECK: Garret, off the  
19 record.

20 MR. RASMUSSEN: Yes.  
21 (Off the record discussion.)

22 Q. Mr. Greenier, have you had a  
23 chance to look at Tharaldson Exhibit 12?

24 A. Quickly, yes.

25 Q. Have you ever seen that document

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1 before?

2 A. Not to my knowledge, no.

3 Q. And I know it has to be --

4 A. Well, I said -- wait a minute.

5 Q. Okay.

6 A. Portions -- in complete, no.

7 Q. Have you seen any pages of the

8 document before?

9 A. Yes.

10 Q. Can you tell me which pages you  
11 have seen before?

12 A. The second page where just the  
13 question is asked. I'm not really sure. I may have  
14 seen the generic survey results.

15 MR. PECK: For the record Page  
16 68606.

17 Q. Yes. Read out the page number.

18 A. Okay.

19 Q. Then that will allow us both to  
20 come back to those pages and have a better record.

21 A. Okay. Again I may have seen  
22 68607, 68608.

23 MR. PECK: Now, is 68608

24 a maybe or a yes?

25 THE WITNESS: No. That was a

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1 yes.

2 MR. PECK: Okay.

3 A. 68610.

4 Q. 68610 you say?

5 A. Uh-huh.

6 Q. Okay. Is that a maybe or a yes?

7 A. That's a yes. You want to me to

8 tell you when?

9 Q. Yes.

10 A. Yesterday with Mr. Peck.

11 Q. Oh, okay. Excluding yesterday?

12 A. Oh, okay. That's what I'm

13 saying on some of these. I did see some of these

14 yesterday with Mr. Peck.

15 Q. No. I'm not going to inquire

16 into his preparation of --

17 A. Okay. Well, then we need to

18 start over again.

19 Q. Although it looks like he's done

20 a good job.

21 MR. PECK: I'll take that as a

22 compliment and not an insult, Garret.

23 MR. RASMUSSEN: The witness is

24 not terribly forthcoming.

25 MR. PECK: Since that was on the

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1 record, I object strenuously.

2 A. May have 68604.

3 Q. Apart from yesterday, now, okay?

4 A. I know, I know.

5 Q. Okay. You may have seen before

6 yesterday 68604?

7 A. Yes.

8 Q. Okay. I'm talking about seeing

9 in the regular course of your business?

10 A. Yes.

11 Q. Okay.

12 A. 68606.

13 Q. Okay.

14 A. May have. They look vaguely

15 familiar.

16 Q. Okay.

17 A. 68607, 68608, 68611 possibly,

18 68612. 68613 is a standard trading area map.

19 Q. Okay.

20 A. I mean it's not colored in here

21 in any way, so --

22 Q. Okay.

23 A. Yes, I see that daily.

24 Q. Okay.

25 A. Same way with 68614, 68615

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1 possibly, the same with 68616, possibly 68617, 68620,  
2 68621. Whether or not I saw this exact page I'm not  
3 sure, but I saw a question like that because I  
4 remember asking what's a Yankilovich monitor.

5 Q. Okay.

6 A. 68622 possibly, 68625 possibly,  
7 and in this format I don't remember 68626. I don't  
8 remember that one.

9 Q. Okay. Does Project G mean  
10 anything to you?

11 A. I have heard the terminology.

12 Q. Did you ever work on anything  
13 called Project G?

14 A. Yes.

15 Q. What do you understand Project G  
16 to mean?

17 A. Project generics.

18 Q. Okay. Was there a Project G  
19 task force?

20 A. I'm really not sure if it was.

21 Q. Were you ever part of any group  
22 which called itself a Project G group or a Project  
23 G --

24 A. I may have been. I'm really not  
25 sure.

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1 Q. Okay. Now, you said you had  
2 seen Page 68604 before?

3 MR. PECK: I think he said he  
4 might have seen it.

5 Q. Is that one you might have seen  
6 or you did see?

7 A. It may be.

8 Q. Okay. Did your study of the  
9 generic marketplace involve finding out information  
10 such as what portion of Liggett's business is  
11 generated by private labeling or by black and white?

12 MR. PECK: What portion of  
13 Liggett's business?

14 MR. RASMUSSEN: Yes.

15 A. No.

16 Q. What portion of anyone's  
17 business?

18 A. Of the segment.

19 Q. Okay. You said -- that was part  
20 of the thing you studied?

21 A. Right.

22 Q. Okay. Did you study that  
23 personally, or did you --

24 MR. PECK: What do you mean by  
25 personally?

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1 Q. I mean did you actually -- did  
2 you ask someone to study it, or did you actually make  
3 a study of it yourself?

4 MR. PECK: I still don't  
5 understand what you mean by that.

6 Q. Okay. It's not an important  
7 question in any event.

8 There's a reference on Page  
9 68606 to a generic survey?

10 A. Yes.

11 Q. Are you familiar with that  
12 survey that's referred to?

13 A. I don't know which survey this  
14 came from.

15 Q. Are you familiar with more than  
16 one survey of the --

17 A. No.

18 Q. Okay. Are you aware of any  
19 surveys?

20 A. Yes.

21 Q. Okay. What surveys are you  
22 aware of?

23 A. I recall I believe one that I  
24 originally worked on or assisted with to the field.

25 Q. Do you recall what type of

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1 information you were seeking to get?

2 A. Distribution at retail.

3 Q. Distribution of generics at  
4 retail?

5 A. Yes.

6 Q. Okay. Directing your attention  
7 to Page 068615, are you aware of any discussions  
8 concerning the validity of switching study  
9 information?

10 A. Yes.

11 Q. Okay. How many such  
12 discussions?

13 A. One in particular.

14 Q. Tell me about that one?

15 A. It may have been more, but one  
16 in particular. Tell you about it?

17 Q. Yes. Who was there and what was  
18 said?

19 A. Dick Blott, Larry Butler, Don  
20 Christensen, Charlie Middleton -- I believe Charlie  
21 was there.

22 Q. Is this the same meeting that  
23 you talked about earlier --

24 A. Yes.

25 Q. -- in your deposition?

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- 1 A. Yes.
- 2 Q. Did anyone express the opinion  
3 that switching study information was not valid?
- 4 A. Yes.
- 5 Q. Who was that?
- 6 A. Dick Blott.
- 7 Q. Did anyone else?
- 8 A. Not that I recall. There may  
9 have been, but I don't recall anyone.
- 10 Q. What was the substance of what  
11 Blott said about --
- 12 A. He thought the indexes were very  
13 high for B&W products.
- 14 Q. And he thought they might not be  
15 accurate?
- 16 A. Correct.
- 17 Q. Did anyone say that they -- did  
18 anyone say that he or she believed they were accurate?
- 19 A. They may have.
- 20 Q. Was any consensus reached at the  
21 meeting about the accuracy of switching studies?
- 22 A. Only that they should be  
23 rechecked.
- 24 Q. Were they rechecked?
- 25 A. I believe so, yes.

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1 Q. Who did the rechecking?

2 A. Who in particular I'm not sure  
3 of. Departmentwise would have been market research.

4 Q. And when you say the indexes  
5 were high, what did you mean?

6 A. Brown & Williamson seemed to be  
7 suffering an inordinately high index of consumers  
8 switching from our products to generics, higher than  
9 anyone else.

10 Q. Okay. By index does that mean  
11 comparing B&W's market share -- percentage of the  
12 market -- percentage of cigarette market in general  
13 with the percentage of people that are switching into  
14 generics who had been former B&W smokers?

15 In other words, say, B&W had a  
16 10 percent market share, but of the people that were  
17 switching into generics, 20 percent of them are former  
18 B&W smokers, and you have a higher -- you have a  
19 higher index because 20 percent of the people are  
20 switching to generics were B&W smokers, but yet B&W  
21 only has 10 percent of the market?

22 MR. PECK: Objection to the  
23 form. That's awfully complicated. If you understand  
24 it, you can answer it.

25 A. In the format that I just heard

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1 you ask the question, no, that's not my understanding.

2 Q. Okay. When you mean that B&W  
3 suffered a high index, what is that index and how is  
4 it calculated?

5 A. Of the numbers of smokers  
6 switching from a cigarette brand to a generic  
7 product --

8 Q. Okay.

9 A. -- our index to the total was  
10 far higher, total being all six cigarette  
11 manufacturers.

12 Q. Okay. After the rechecking that  
13 you referred to was B&W's index still far higher?

14 A. I believe, I'm not really sure,  
15 but I believe it was even higher than it was the first  
16 time.

17 Q. Are you aware of any discussions  
18 about the validity of the study that rechecked the  
19 index?

20 A. I would imagine there was  
21 discussions. Was I present or involved in them, no.

22 Q. Do you know whether Mr. Blott's  
23 concerns were satisfied?

24 A. Do I know?

25 Q. Yes.

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1 A. No.

2 Q. Did you say anything that you  
3 heard either directly or by hearsay that would  
4 indicate that he had withdrawn his concern about the  
5 validity of the switching studies data?

6 A. Possibly by hearsay.

7 Q. Do you know whether the  
8 understanding that B&W's switching study index was  
9 higher than the other cigarette companies was one of  
10 the motivating factors for B&W's entrance into the  
11 generic segment of the market?

12 A. Do I know that?

13 Q. Yes.

14 A. No, I don't. I don't really  
15 know.

16 Q. Because you didn't participate  
17 in the decisions as to enter the market or not to  
18 enter the market?

19 A. Correct.

20 Q. So you don't know the reasoning  
21 behind it; is that right?

22 A. Correct.

23 Q. Okay. Do you understand -- if I  
24 showed you switching studies, can you interpret them  
25 for me?

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224 20203

1 A. I'm a sales type. I have got a  
2 fair understanding of them, not a tremendous, but a  
3 fair understanding.

4 Q. Okay. Did you consider them to  
5 be valid in the sense that they accurately showed that  
6 B&W was suffering greater losses to generics than  
7 other cigarette manufacturers?

8 A. Did I consider it?

9 Q. Yes.

10 A. Yes.

11 Q. Are you aware of anyone that did  
12 not believe that to be the case?

13 MR. PECK: Objection. We have  
14 just gone through the discussions with Mr. Blott.

15 Q. But apart from that, apart from  
16 what you have already testified. In other words,  
17 anyone besides Mr. Blott?

18 A. I don't know of anyone.

19 Q. Okay. Now, the switching  
20 studies came in various waves; isn't that right? Do  
21 you recall that?

22 A. I believe so.

23 Q. Did you ever compare indexes  
24 from wave to wave?

25 A. I recall comparing one to

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B24 20204

1 another. Beyond that, I don't --

2 Q. Why did you make that kind of  
3 comparison?

4 A. It was brought to my attention,  
5 if my memory serves me right, that after we were asked  
6 to recheck it, that second one was even higher than  
7 the first.

8 Q. Is it accurate to say then you  
9 were looking for trends through the waves --

10 MR. PECK: Objection.

11 Q. -- to see whether the indexes  
12 were increasing or decreasing?

13 MR. PECK: Objection. That's  
14 not what he said at all.

15 MR. RASMUSSEN: I'm asking him.

16 A. No.

17 Q. Are you aware of any useful  
18 information that can be obtained from comparing an  
19 index from one wave to the comparable index in a  
20 previous wave?

21 MR. PECK: Objection. Ask him  
22 what he did, if anything.

23 MR. RASMUSSEN: Get to that one.

24 A. Restate the question again.

25 Q. Okay. Do you think that

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1 different waves of switching studies can be used to  
2 get a reliable understanding of trends of switching?

3 MR. PECK: Objection. You have  
4 laid no foundation for that question at all. The  
5 witness isn't an expert on switching studies as he's  
6 already said.

7 MR. RASMUSSEN: Well, I beg to  
8 differ. He's not -- I wouldn't sell this witness  
9 short on that score.

10 A. My exact statement is my  
11 familiarity with switching studies is so limited  
12 that --

13 Q. You don't have any opinion?

14 A. No.

15 Q. You don't have to be too modest.  
16 You don't have to be modest.

17 A. I'm the safes type.

18 Q. Page 68618 is a page you haven't  
19 seen before -- you said you haven't seen before in the  
20 regular course of your business, but there's  
21 handwriting on that page that refers to a Middleton  
22 Tobacco from L&M. Have you ever heard of Middleton  
23 Tobacco?

24 A. Yes.

25 Q. What is it?

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824 20206



1 A. My understanding is that it was  
2 a branch of Liggett & Meyers that sold their  
3 noncigarette products.

4 Q. Do you know whether B&W ever  
5 hired any Middleton employees?

6 A. Not to my knowledge.

7 Q. Do you ever recall any  
8 discussions of B&W hiring any Liggett employees?

9 A. I don't recall any.

10 Q. Does the term Hallmark mean  
11 anything to you in terms of a generic cigarette or a  
12 private -- or a cigarette brand?

13 A. No.

14 Q. Does the term branded generic  
15 mean anything to you?

16 A. Yes.

17 Q. Okay. Have you played any  
18 role -- let me rephrase that.

19 Have you had any discussions  
20 with anyone concerning whether B&W should market a  
21 branded generic cigarette?

22 MR. PECK: Just a reminder, the  
23 question is obviously pre of August 31, '85.

24 A. I may have. I don't really  
25 recall any in particular.

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824 20207

1 Q. Do you know whether B&W was  
2 considering marketing a branded generic called  
3 Hallmark in the time period that you were national  
4 account manager?

5 MR. PECK: Since he's already  
6 said Hallmark doesn't mean anything to him, I think  
7 your question is meaningless, but go ahead and answer  
8 it.

9 A. No, I don't know.

10 Q. On Page 68623 -- that's also a  
11 page that you said you hadn't seen before. There's a  
12 reference to a price survival war.

13 A. You said that I said I hadn't  
14 seen it. I didn't say anything one way or another. I  
15 don't remember seeing it.

16 Q. Okay. Are you aware of any  
17 discussions about the possibility of a price survival  
18 war if B&W entered the generic segment of the market?

19 A. No. I don't recall any.

20 Q. With respect to the following  
21 page, 068624, do you recall whether Mr. Blott ever  
22 asked whether generics can assist the volume of other  
23 Brown & Williamson business?

24 A. He may have. I don't recall.

25 Q. Okay. Under the heading

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1 options, do you recall any discussions of any of those  
2 options?

3 A. I don't recall any.

4 MR. PECK: Off the record.

5 (Off the record discussion.)

6 (Greenier Exhibit 2 was marked  
7 for identification.)

8 Q. I have shown the witness a  
9 document which has been premarked Greenier Deposition  
10 Exhibit 2, which bears production number on 89439.  
11 Have you ever seen that document before?

12 A. I don't remember it.

13 Q. Do you recall -- the document  
14 refers to a quick response within Revco. Do you know  
15 what that response was?

16 A. No, I do not.

17 Q. Do you know --

18 A. I don't remember it.

19 Q. Okay. I know you don't remember  
20 the document now, but now I'm going to --

21 A. I don't remember the response  
22 either.

23 Q. Okay. Do you remember what, if  
24 any, request was made to Revco?

25 A. I don't remember of any, no.

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224 20209

1 Q. As national accounts manager did  
2 you ever call on Revco?

3 MR. PECK: About generics?

4 Q. Yes, about generics?

5 A. No.

6 (Greenier Exhibit 3 was marked  
7 for identification.)

8 Q. I direct your attention to a  
9 document which I have premarked as Exhibit 3, which  
10 bears production number 156973 --

11 MR. PECK: -- through 156980.

12 MR. RASMUSSEN: Right.

13 MR. PECK: Are you finished  
14 reading it?

15 A. Yes, I am.

16 Q. And I'll just ask whether you  
17 have seen that document before?

18 A. I may have. I don't remember it  
19 in particular.

20 Q. Directing your attention to the  
21 executive summary portion of the document, which is on  
22 the bottom of 156973 and the top of 156974, did you  
23 have an understanding in the first few months of 1984  
24 that Raleigh, Barclay, Belair and Viceroy were among  
25 the top six brands in terms of greater than fair share

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B21 20210

1 contributions to generics?

2 A. I don't remember that to be the  
3 case.

4 Q. Do you remember any discussion  
5 of that?

6 A. No, I don't remember.

7 Q. Do you remember any discussion  
8 about Kool's contribution to generics?

9 A. I don't remember anything.

10 Q. Okay. I assume that you said  
11 you may have seen the document because it indicates it  
12 is a copy to you?

13 A. I get a great deal of mail in.

14 Q. Okay.

15 A. I see<sup>o</sup> it was addressed. As far  
16 as being copied --

17 Q. Do you have any idea why you  
18 would have been copied on a document such as this?

19 A. It was written<sup>o</sup> at that time,  
20 January 23rd, by a subordinate of mine.

21 Q. Okay. You weren't keeping any  
22 master file on generic information, were you?

23 A. No.

24 (Greenier Exhibit 4 was marked  
25 for identification.)

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B24 20211

1 Q. Okay. I'll direct your  
2 attention now to Exhibit 4, which we have premarked,  
3 and which starts with production number 079975 and  
4 runs through --

5 MR. PECK: 79981.

6 A. I need a couple of minutes to  
7 read this one.

8 Q. Okay. Of course, if you have  
9 never seen the document before, you don't have to take  
10 the time to read it. You just tell me that.

11 A. I don't remember it.

12 Q. Okay. Why don't I -- just take  
13 a look at page 079977 of the exhibit.

14 A. Okay.

15 Q. Do you have any idea why data  
16 from wave 32, 33, 34 and 35 is placed next to each  
17 other?

18 A. Do I have any idea?

19 Q. Yes.

20 MR. PECK: Objection to the  
21 form.

22 A. I could give you a guess.

23 Q. Okay.

24 A. And that's all it would be?

25 MR. PECK: Don't guess.

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P 24 20212

1 A. Okay.

2 MR. PECK: If you don't know --

3 A. I don't know. I really don't

4 know.

5 Q. I don't want you to guess, but

6 if you have a reasonable basis for what you are

7 saying, then I would want you to give an answer even

8 though you may not be 100 percent sure?

9 A. No, I couldn't.

10 Q. Okay.

11 (Off the record discussion.)

12 (Greenier Exhibit 5 was marked

13 for identification.)

14 Q. Okay. I will now show you a

15 document which has been premarked as Greenier

16 Deposition Exhibit 5. It starts with production

17 number 088842, and if you can just read the last

18 number to me?

19 A. 088845.

20 Q. Okay. Did you write this

21 document?

22 A. I believe so.

23 Q. On the first page there is a

24 reference to -- under Project G heading there's a

25 reference to completion of sales activities, portion

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CONFIDENTIAL MINNESOTA TOBACCO LITIGATION

1 of presentation?

2 A. Yes.

3 Q. What presentation were you  
4 referring to?

5 A. I really don't recall.

6 Q. Do you recall working on any  
7 presentations with respect to generic cigarettes as  
8 national account manager?

9 A. Yes.

10 Q. How many?

11 MR. PECK: Let me ask what you  
12 mean by that, Garret? How many different types of  
13 presentations?

14 MR. RASMUSSEN: Yes.

15 MR. PECK: Or how many times  
16 could he have given the same presentation to different  
17 customers? What are you getting at?

18 Q. First I mean different  
19 presentations? And I'm excluding presentations to  
20 customers.

21 A. Oh.

22 Q. Okay?

23 A. Okay.

24 Q. Any presentations within B&W  
25 itself prior to B&W's entry into the generic markets?

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B24 20214

CONFIDENTIAL MINNESOTA TOBACCO LITIGATION



1 A. While I was national accounts  
2 manager?

3 Q. Or in your preceding job as well  
4 concerning generics?

5 MR. PECK: And he said before  
6 B&W entered into the generic segment.

7 Q. Right, which is about June 1st,  
8 1984?

9 A. I don't recall working on a  
10 presentation. That's why I'm looking at my own  
11 writing and wondering what in the hell I was talking  
12 about.

13 Q. Okay. Do you recall what the  
14 pertinent questions that you were involved in  
15 answering were?

16 A. No, I don't.

17 Q. Can you tell me how much time  
18 you believe you spent on considering generic issues in  
19 March of 1984?

20 A. I would say in March of '84 very  
21 little time.

22 Q. Does the brand line  
23 rationalization have anything to do with generics,  
24 reference to brand line rationalization that you see  
25 under Project G?

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B24 2C215

1 A. Not to my knowledge, no.

2 Q. Turning to the next page, what  
3 is the volume impact program?

4 MR. PECK: Well, let me rephrase  
5 that and ask you to ask him if it has anything to do  
6 with generics because if it doesn't, it's beyond the  
7 scope.

8 MR. RASMUSSEN: Fair enough. I  
9 mean, I'm not sure it's beyond the scope, but I'll ask  
10 the first question first.

11 Q. Does the volume impact programs  
12 have anything to do with generics?

13 A. No, not to my knowledge.

14 Q. Are they strictly branded  
15 programs?

16 A. As far as I know, yes.

17 Q. Directing your attention to Page  
18 3 of the document, there's a heading strategic  
19 marketing plans conference. Do you see that?

20 A. Yes.

21 Q. Did you go to that conference?

22 MR. PECK: Objection. On the  
23 voir dire, does that have anything to do with  
24 generics?

25 A. I need to just read this again.

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B24 20218

1 Q. Okay. Go ahead and read it.

2 (Off the record discussion.)

3 A. Okay. What was the question  
4 again?

5 MR. PECK: My question was  
6 whether this has anything to do with generics before  
7 allowing Garret to go any further?

8 A. No, I do not believe it does.

9 Q. You didn't work on any generic  
10 strategic plans, did you?

11 A. Here you're talking about?

12 Q. No. We're putting this aside  
13 now, and I'm now just asking you a broader question.  
14 Have you worked on any generic strategic plans?

15 MR. PECK: Prior to August 31,  
16 1985.

17 A. Yes.

18 Q. Which ones?

19 MR. PECK: Objection to the  
20 form. I'm not sure whether that can be answered.

21 Q. What work did you do on generic  
22 strategic plans?

23 A. I was asked who might well fill  
24 the bill of a generic region manager, who being one of  
25 our managers.

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E24 20217

1 Q. Who asked you that?  
2 A. Don Christensen.  
3 Q. Who did you say could fill the  
4 bill?  
5 A. Tony Riggone, Charlie Tyler, Joe  
6 McCormick, Ray Ferrett.  
7 Q. Did you participate in any other  
8 way on any other generic strategic marketing plan?  
9 A. I recall discussions regarding  
10 sales calls.  
11 Q. What were those discussions?  
12 A. Which calls?  
13 Q. Okay. We'll get to those calls.  
14 A. I figured you would.  
15 (Greenier Exhibit 6 was marked  
16 for identification.)  
17 Q. Let me see that. I will now  
18 show you a document which I have premarked Exhibit 6,  
19 which bears production number 96914 through 96915 and  
20 ask you if you have ever seen that before?  
21 MR. RASMUSSEN: Off the record.  
22 (Off the record discussion.)  
23 Q. Have you ever seen that document  
24 before?  
25 A. I may have. I don't remember

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B24 20218

1 it. I haven't finished reading it yet.

2 Q. Okay. But you don't remember  
3 it, that's fine. I'm not going to ask you about very  
4 much of it.

5 There's a reference to you --  
6 there appears to be a reference to you in the third  
7 line of the document across from the 5/31.

8 A. Uh-huh.

9 Q. Did you do anything with regard  
10 to introductory terms for generics?

11 A. I may well have. I don't really  
12 remember.

13 Q. Why do you say you may well  
14 have? Simply because your name is there?

15 A. Yeah.

16 Q. Okay. But you didn't decide --  
17 you weren't a part of any decision making team -- you  
18 weren't consulted as to the terms of -- what the terms  
19 should be for B&W's generics, were you?

20 A. Terms --

21 Q. Whether they should be 2  
22 percent, 30 or something else?

23 A. I may have been consulted. I  
24 don't really remember.

25 Q. Okay. You don't recall any

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821 20219

CONFIDENTIAL MINNESOTA TOBACCO LITIGATION

1 discussion of the credit terms for generics? That's a  
2 no? You have to --

3 A. I don't remember any.

4 Q. No, I'm not questioning you.

5 Just for the deposition purposes you have to say no or  
6 yes.

7 A. Correct.

8 Q. Because there's no T.V.

9 A. Thank God.

10 (Greenier Exhibit 7 was marked  
11 for identification.)

12 Q. I'll show you a document which  
13 has been premarked Greenier Deposition Exhibit 7 which  
14 bears production number 088833 to 088834 and ask you  
15 if you have ever seen that before?

16 A. I wrote it. I don't remember it  
17 in particular other than yesterday when Mr. Peck  
18 showed it to me.

19 Q. Okay. Do you recall discussions  
20 of the possibility of B&W marketing a yellow generic  
21 pack?

22 MR. PECK: We're talking about  
23 the period approximately July '84?

24 MR. RASMUSSEN: Yeah, about this  
25 time period.

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824 20220

1 A. Vaguely I remember some  
2 discussions.

3 Q. What was the substance of those  
4 discussions?

5 A. As I recall, merely for the  
6 sense of having a fourth regional label.

7 Q. Do you recall any discussions of  
8 why that fourth regional label might possibly be a  
9 yellow one?

10 A. Again vaguely because it was a  
11 great deal of yellow generic business out there, black  
12 and yellow generic business.

13 Q. But all of the black and yellow  
14 packages were made by -- were Liggett manufactured  
15 cigarettes, isn't that right, at the time?

16 A. I don't remember.

17 Q. Now, moving beyond the time  
18 period of just July '84, do you recall discussions of  
19 B&W marketing a yellow pack of generics?

20 A. I don't recall any.

21 Q. Okay. Did you prepare that  
22 exhibit in the regular course of your business?

23 MR. PECK: Objection. I don't  
24 know what you mean by that.

25 Q. Well, you write memos from time

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824 20221

1 to time as --

2 A. Yes.

3 Q. -- at that time period? And  
4 this is a memo that you wrote as part of your job,  
5 right?

6 A. Whether or not it was a part of  
7 my job I don't -- I'm assuming that I was asked to the  
8 way it appears.

9 Q. But I mean you did write it?

10 A. Uh-huh.

11 Q. It wasn't anything abnormal; it  
12 was just a regular memo you write from time to time?

13 MR. PECK: Objection to the  
14 form.

15 Q. I'm not trying to trick you.  
16 I'm just trying to establish that it's a business  
17 record.

18 MR. PECK: Objection to the  
19 form. What's the question?

20 MR. JENKINS: Off the record.  
21 (Off the record discussion.)

22 Q. At the time you prepared this  
23 document you were not aware of any inaccurate  
24 information in the document, were you?

25 A. No. I don't realize any

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824 20222



1 inaccurate information.

2 (Greenier Exhibit 8 was marked  
3 for identification.)

4 Q. Okay. Now, I'll show you a  
5 document which has been premarked Greenier Exhibit 8,  
6 which bears production number 124379 -- it's either 9  
7 or an 8. We call it a 9. Have you ever seen that  
8 before?

9 A. I was addressed on that. I may  
10 very well.

11 Q. Do you know who Mr. Bores is?

12 A. Who he is?

13 Q. Yes.

14 A. He is director of trade  
15 development.

16 Q. Do you know what position he  
17 held on or about August 7, 1984?

18 A. Director of trade development.

19 Q. What role did he have, if any,  
20 in the B&W decision to market generic cigarettes?

21 MR. PECK: Objection. The  
22 question is too broad. You want to rephrase that?

23 MR. RASMUSSEN: No.

24 MR. PECK: If you can, answer  
25 it.

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821 20223

1 A. I don't know what his role was  
2 in particular.

3 Q. Did he participate in the  
4 decision making with respect to B&W's decision to  
5 enter the generic segment of the market?

6 A. I really don't know.

7 Q. Did you have any dealings with  
8 him concerning generics?

9 A. He was my boss.

10 Q. Did you report to him from time  
11 to time about your studies of the generic market?

12 A. About my studies of the generic  
13 market?

14 Q. Yes.

15 A. Not that I recall about my  
16 studies of the generic market.

17 Q. Did you discuss generic  
18 cigarettes with him at any time prior to the time you  
19 entered the market?

20 A. May very well have, yes.

21 Q. Can you recall any specific  
22 discussions? Can you recall the substance of any  
23 discussions?

24 A. Possibly sales calls they have  
25 made.

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824 20224

1 Q. Did any -- are you aware of any  
2 discussions with him about the terms of offers you  
3 could make to any customers for generic cigarettes?

4 MR. PECK: Can I hear that  
5 question back?

6 (The reporter read the record.)

7 MR. PECK: I take it you're  
8 talking about discussions between this witness and Mr.  
9 Bores?

10 MR. RASMUSSEN: Correct.

11 A. I may very well have. I don't  
12 remember any in particular.

13 Q. Are you aware of any documents  
14 that could refresh your recollection?

15 MR. PECK: If you have any,  
16 Garret, why don't you bring them in?

17 A. I don't recall any.

18 Q. Okay.

19 A. That doesn't mean that there  
20 aren't any.

21 Q. I'm going to hand you a series  
22 of exhibits which have all been marked in the  
23 Tharaldson deposition. There's Tharaldson Exhibit 24,  
24 Tharaldson Exhibit 11 --

25 MR. PECK: Why don't we do these

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1 one at a time?

2 MR. RASMUSSEN: Because I just  
3 want to see if he has seen any of them before. If he  
4 has, we can put the ones he hasn't seen aside and do  
5 them one at a time.

6 MR. PECK: If you hand him six  
7 of them at once, it's going to get much more confusing  
8 than saying, "Here's Tharaldson 24, have you seen it,"  
9 and then go on to the next one.

10 MR. KLOTZ: Okay. I'll accept  
11 that.

12 Q. When I say have you seen it  
13 before, I mean have you seen it prior to your  
14 preparation for this deposition?

15 A. I don't remember this one, at  
16 least the first part of it.

17 Q. Do you recall seeing any pages  
18 of it before?

19 A. 095623.

20 Q. Did you prepare that page?

21 A. I don't remember preparing it.  
22 I remember seeing it.

23 Q. Have you seen it before in  
24 presentations to customers?

25 A. Yes.

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1 Q. Okay. Is that the only other  
2 place you have seen it?

3 A. I'm not really sure if that's  
4 the only other place I have seen it.

5 Q. Are you up to Page 17 and you  
6 haven't seen any pages other than the one you  
7 mentioned before?

8 A. Not that I recall.

9 Q. Did Jan Tharaldson report to you  
10 during January, February, and March of 1984?

11 MR. PECK: Objection as a  
12 compound question, but you can answer it for each of  
13 those months?

14 A. For each of those months?

15 Q. Yes, for that time period?

16 A. January, yes.

17 Q. But not February, March and  
18 April?

19 A. Correct.

20 Q. Let me just show you another  
21 document which has been marked Tharaldson Exhibit 11.

22 A. Are we done with this one?

23 Q. Yes. And I'll ask you if you  
24 have seen that document before? And this question  
25 goes to the entire document as opposed to just

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1 individual pages of it.

2 A. Okay.

3 Q. Have you seen that document  
4 before?

5 A. I don't recall it.

6 Q. Do you recall discussions of --  
7 prior to the time that B&W entered the marketplace  
8 about the possibility of B&W replacing Liggett in the  
9 generic segment of the marketplace?

10 A. No, I don't recall any.

11 Q. I'll show you a document which  
12 has already been marked as Tnaraldson Exhibit 38 and  
13 simply ask you if you have seen the document as a  
14 document before?

15 A. We're talking other than  
16 yesterday?

17 Q. Yes, we are.

18 A. I don't recall this document.

19 Q. Did you play any part in  
20 determining what the volume rebate levels would be at  
21 any time for generic cigarettes?

22 A. What do you mean by play any  
23 part?

24 Q. Were you consulted as to the --  
25 where the break points should be on a volume rebate --

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1 on volume rebate schedules for generics?

2 A. I may have been asked an  
3 opinion, but to determine them, no.

4 Q. Did you give any opinion on  
5 the break points?

6 A. I may have. I don't recall  
7 anything in particular.

8 Q. What opinion may you have given?  
9 MR. PECK: Objection.

10 A. I don't know.

11 Q. Did you ever study -- did you  
12 ever make any effort to determine whether the break  
13 points on any volume rebate schedule corresponded with  
14 expectation -- corresponded with actual estimates of  
15 volumes of generic cigarettes that customers could  
16 buy?

17 MR. PECK: I don't understand  
18 that question at all.

19 A. I don't either.

20 Q. Okay. Did you ever study volume  
21 potential with respect to generics for potential  
22 customers of B&W generic cigarettes, in other words,  
23 how many generics could they buy?

24 A. I'm still confused on the  
25 question.

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1 Q. What part of it --

2 A. I'm not sure what you're asking.

3 Q. Did you ever try to understand  
4 the buying potential of any customers with respect to  
5 generics, in other words, how much, how many generics  
6 could B&W reasonably expect to sell to customer X, how  
7 many cases per quarter of generics could B&W possibly  
8 sell to customer Y?

9 A. You asked me two questions if  
10 I'm understanding. Did I ever study to see if -- how  
11 much volume a customer did in generics?

12 Q. No. I'm talking about now --  
13 okay. Well, you want to answer that one first?

14 In the studying -- prior to the  
15 time B&W entered the market did you try to obtain  
16 data about the volume of generic purchases by  
17 customers?

18 A. I vaguely remember on those  
19 sales calls that I was going to make trying to  
20 determine ahead of time what kind of volume the  
21 customer did.

22 Q. Okay. Why were you trying to  
23 determine that?

24 A. To insure that we made them the  
25 correct offer, the published offer, that they fit a

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1 certain volume bracket.

2 Q. Did you try to obtain this  
3 information at any time prior to June 1st, 1984?

4 MR. PECK: Objection. It  
5 depends on when he made those sales calls.

6 Q. That's right.

7 A. You know, I don't remember the  
8 exact timing on it. When I made those sales calls I  
9 would have found out, or tried to have found out  
10 beforehand.

11 Q. Okay. And you did obtain some  
12 information about potential volume of purchases that  
13 customers could make of generic cigarettes?

14 MR. PECK: Objection. For the  
15 specific customers he was going to call on?

16 MR. RASMUSSEN: Yes.

17 A. I believe I did. I'm not really  
18 positive, but I believe I did.

19 Q. Okay. Did you ever use that  
20 data to -- as the basis for any opinion as to where a  
21 break point should be on a volume rebate schedule?

22 MR. PECK: I think he's already  
23 said the break points were already there. Why don't  
24 you ask him that question specifically if you're not  
25 sure.

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1 A. Did I ever use that data to  
2 determine a break point?  
3 Q. Yes.  
4 A. Not that I recall, no.  
5 Q. I'll show you Tharaldson  
6 Deposition Exhibit 15 and ask you if you have ever  
7 seen it before?  
8 (Off the record discussion.)  
9 Q. Have you ever seen Tharaldson  
10 Exhibit 15 before as a document?  
11 A. No.  
12 Q. It's not a presentation that you  
13 helped prepare?  
14 A. Not that I recall, no.  
15 Q. We had seen earlier a reference  
16 to a presentation -- a document that said that you  
17 worked on a presentation. This doesn't refresh your  
18 recollection as to --  
19 A. No.  
20 Q. -- any presentation you worked  
21 on?  
22 A. No.  
23 Q. I'll show you finally Tharaldson  
24 Exhibit 16 and ask you if you have ever seen that  
25 document before as a document?

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1 A. The document, not individual  
2 pages, am I correct?

3 Q. That's correct. I mean, so far  
4 the only page that you say that you have seen before  
5 is 068452, and you're up to 068453, right?

6 A. Yes.

7 MR. RASMUSSEN: Off the record.  
8 (Off the record discussion.)

9 Q. Have you ever seen Tharaldson  
10 Exhibit 16 before?

11 A. Not that I recall.

12 Q. Okay. Now, I will show you a  
13 document which has been marked as Tharaldson Exhibit  
14 37, which bears production number 098504 through  
15 098523, and I simply have two questions about this  
16 document.

17 One, did you help prepare it,  
18 and, two, did you make the call that the document  
19 lists you as making, or scheduled you to make at page  
20 098510 to Fleming Foods?

21 MR. PECK: Objection to the form  
22 of the question, but --

23 MR. RASMUSSEN: We'll take them  
24 one at a time after he takes a look at it. I only  
25 tell you in advance these two questions so it can

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1 speed up your review of the documents.

2 A. What was the first question?

3 MR. PECK: Have you ever seen  
4 the document in its entirety?

5 MR. RASMUSSEN: That's not  
6 actually the first question, but I'll accept it.

7 MR. PECK: I thought that was  
8 your first question.

9 MR. RASMUSSEN: No. It's a good  
10 one, though.

11 THE WITNESS: Quit helping.

12 MR. RASMUSSEN: Off the record.

13 (Off the record discussion.)

14 Q. Actually my first question was  
15 did you write this document --

16 A. No.

17 Q. -- or any portion of it?

18 A. Well -- any portion of it?

19 Q. Yes.

20 A. I haven't seen it all. I  
21 haven't reviewed it all.

22 Q. Okay. Slip through the pages  
23 then.

24 A. Did I prepare any part of this,  
25 no.

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1 Q. Directing your attention, Mr.  
2 Greenier, to page 098509 of Tharaldson Exhibit 37,  
3 under the heading Target Customer List, the following  
4 page your name appears across from Fleming Food. Did  
5 you visit Fleming Foods just prior to or just after  
6 B&W's announcement that it was entering the generic  
7 segment of the marketplace?

8 A. No.

9 Q. Did you visit them at any time  
10 with respect to generic cigarettes?

11 A. No.

12 Q. Okay.

13 A. You're talking prior to August  
14 31st?

15 Q. Yes.

16 A. No.

17 Q. Okay.

18 Q. Did you, in fact, visit

19 Fontana --

20 A. Yes.

21 Q. -- in that time period?

22 MR. PECK: Asked and answered.

23 A. Yes.

24 Q. What was the approximate date of  
25 that visit to Fontana?

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824 20235

- 1 A. Late May, early June.
- 2 Q. Okay.
- 3 A. In that time frame, 1984.
- 4 Q. What was the purpose of that
- 5 visit assuming it had a purpose?
- 6 A. To discuss Brown & Williamson's
- 7 entry into the generic segment of the cigarette
- 8 business.
- 9 Q. Who did you meet with?
- 10 A. Joe Miazgowicz.
- 11 Q. Is that spelled M-i-a-z-g-o-w-i-
- 12 c-z?
- 13 A. Sounds correct.
- 14 Q. Okay.
- 15 A. I always have to look it up
- 16 before I spell it.
- 17 Q. Did you give him a written
- 18 document, did you make a written presentation?
- 19 A. I believe I did, yes.
- 20 Q. Did you -- I may have already
- 21 asked this, but I don't remember -- I may not have
- 22 been precise -- do you recall whether that visit was
- 23 before the time that B&W actually started
- 24 manufacturing generic cigarettes?
- 25 MR. PECK: If you know.

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B24 20236

1 A. I'm not sure if we had started  
2 to manufacture or not.

3 Q. Okay. Did you bring any samples  
4 with you of B&W generic cigarettes or of --

5 A. I believe I did. I may have, I  
6 don't really recall.

7 Q. Do you recall whether you  
8 brought any generic -- any B&W generic packages with  
9 you to that presentation?

10 A. I may have. Again I really  
11 don't recall.

12 Q. Was there any discussion at that  
13 meeting about the packaging of B&W generic cigarettes?

14 A. What do you mean was there  
15 discussions about packaging?

16 Q. About whether it looked or  
17 didn't look like -- about whether the packages looked  
18 or didn't look like the generic cigarettes which were  
19 already on the market?

20 A. I don't really recall. There  
21 may have been.

22 Q. What makes you say that there  
23 may have been?

24 A. From a document that I saw  
25 yesterday.

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824 20237

1 Q. Okay. Which document was that?

2 Do you recall that?

3 A. I believe it was a trip report.

4 Q. What was the substance of the  
5 document?

6 A. I don't remember the complete  
7 substance.

8 Q. Did the document refresh your  
9 recollection about what may have happened in that  
10 conversation at that presentation at Fontana Brothers?

11 A. Somewhat.

12 Q. What was it about the document  
13 that refreshed your recollection?

14 MR. PECK: Object to the form of  
15 the question. It's obvious. You can answer.

16 A. Regarding packaging.

17 Q. Yeah.

18 A. Mr. Miazgowicz thought that they  
19 were very similar, and I stated that there were marked  
20 differences.

21 Q. Okay.

22 A. Or words to that effect.

23 Q. Did Mr. Miazgowicz or whatever  
24 his name is --

25 A. Close enough.

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1 Q. -- comment about whether it was  
2 important or not important to him whether the B&W  
3 packages looked or didn't look like existing generic  
4 packages?

5 A. I seem to recall due to seeing  
6 that document yesterday that that was a comment,  
7 something like that that he made.

8 Q. He thought it would be  
9 important -- he thought it was important that they  
10 look like the existing generics?

11 A. Similar.

12 Q. Similar?

13 A. (Affirmative nod.)

14 Q. Did he explain why he thought  
15 that was important?

16 A. Again, inasmuch as I saw the  
17 document yesterday I seem to recall in there something  
18 about consumer franchise, make sure his franchise was  
19 intact.

20 Q. Did he express concern that if  
21 the package looked too dissimilar to the existing  
22 packages, then customers might not continue buying it  
23 because they were used to -- well, I'll stop there,  
24 might not -- might have a decline in sales?

25 A. I don't recall that as part of

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1 the conversation.

2 Q. Do you recall any other parts of  
3 the conversation that dealt with the similarities  
4 between the B&W packages and other generic packages?

5 MR. PECK: Objection to the form  
6 of the question. Do you recall any other discussions  
7 about packaging?

8 A. I don't recall any.

9 Q. Let me show you a document which  
10 we will mark as the next deposition exhibit, which is  
11 9, which bears production number 088839 through  
12 088840.

13 (Greenier Exhibit 9 was marked  
14 for identification.)

15 Q. Look at Exhibit 9 and tell me if  
16 that was the document that refreshed your recollection  
17 about the Fontana Brothers call?

18 A. This is the document.

19 Q. Did you write the document?

20 A. Yes, I did.

21 Q. Did you write it shortly after  
22 your visit with Fontana Brothers people?

23 A. I am not sure. It appears to be  
24 written May 31st. I'm not sure of the date. It says  
25 that I made the call on May 30th, so must have.

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B24 20240

1 Q. At other times in the past have  
2 you written memos about calls after you made a call?

3 A. On subjects other than generics  
4 or just generics?

5 Q. No. On any subjects?

6 A. Yes.

7 Q. It's routine practice of yours?

8 A. Yes.

9 Q. And this is an example of one of  
10 those routine documents prepared after a call; is that  
11 right?

12 O MR. PECK: Objection. You can  
13 answer.

14 A. They would take different forms.

15 Q. Okay. But this is one form?

16 A. Yes.

17 Q. And it was prepared in the  
18 regular course of your business?

19 A. Yes.

20 Q. Directing your attention to the  
21 fourth bullet on the first page --

22 A. Yes.

23 Q. -- there's a reference to  
24 product exclusivity. Does that refresh your  
25 recollection about any -- well, I guess I'm not sure

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B24 20241

1 that I have exhausted your recollection on that point.  
2 Was there any discussion of product exclusivity with  
3 Mr. Miazgowicz?

4 A. With regards to label, yes.

5 Q. What was that discussion?

6 A. As I recall, it dealt with  
7 Fontana Brothers having the use of a label in a given  
8 geographical area.

9 Q. Which label was that?

10 A. It says in the document that I  
11 pitched branded lights.

12 Q. Did you have a sample of the  
13 branded light package with you then?

14 A. I don't recall if I did or did  
15 not.

16 Q. But obviously Mr. Miazgowicz  
17 must have seen a package?

18 A. Yeah. Whether it was package or  
19 artwork I'm not really sure.

20 Q. Either a package or a picture?

21 A. (Affirmative nod.)

22 Q. Now, at that time the branded  
23 light cigarettes had a tobacco leaf on them, didn't  
24 they?

25 A. I don't recall if it did or did

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824 20242

1 not.

2 Q. They had a closure seal which  
3 was black and gold and it had an oval on them, isn't  
4 that right?

5 A. I don't recall exactly when the  
6 oval was on or off.

7 Q. Okay. It was on prior to the  
8 initiation of this lawsuit, though, isn't that right?

9 MR. PECK: If you know.

10 A. I'm not sure the date the  
11 lawsuit was initiated.

12 Q. Okay. Did Mr. Miazgowicz  
13 comment that the physical appearance of the product  
14 was close enough so that there should be no consumer  
15 adversity?

16 A. From what I'm seeing here -- my  
17 memory would have been far better back on May 31st --  
18 I would say yeah, but I don't recall it at this point  
19 in time.

20 Q. Did he explain what he meant by  
21 consumer adversity?

22 A. I don't recall if he did or did  
23 not.

24 Q. Okay.

25 A. I'm not sure if that's his words

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1 or mine.

2 Q. That phrase could be your  
3 phrase?

4 A. Possibly.

5 Q. How long was your meeting with  
6 Mr. Miazgowicz?

7 A. Timewise?

8 Q. Yes.

9 A. Extended over lunch. Hour to  
10 two. I'm not really sure of the time, length of time.

11 Q. Mr. Tyler accompanied you to  
12 that meeting?

13 A. I believe he did, yes.

14 Q. Did anyone accompany Mr.  
15 Miazgowicz from Fontana Brothers?

16 A. I don't remember anyone else  
17 there.

18 Q. Did you make any notes of the  
19 meeting other than the -- other than this exhibit  
20 which you dictated after the meeting or which you  
21 wrote after the meeting?

22 A. I don't remember of any.

23 Q. Do you recall anyone making  
24 notes there?

25 A. I don't really recall.

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824 20244

1 Q. Did Fontana Brothers decide to  
2 buy any -- did Fontana Brothers end up purchasing any  
3 generic cigarettes from B&W?

4 MR. PECK: At that time?

5 Q. Within two or three months --  
6 within three months after the May 31st --

7 A. I'm not really sure when they  
8 purchased any from us.

9 Q. They didn't make any commitment  
10 at the time of the meeting?

11 A. Any commitment to what?

12 Q. To purchase, to sign a contract  
13 or to purchase?

14 A. Not that I recall, no.

15 Q. Did you follow up with Mr.  
16 Miazgowicz after the meeting?

17 A. Me personally?

18 Q. Yes.

19 A. No.

20 Q. Do you know whether anyone did?

21 A. I believe Mr. Tyler may have.

22 Q. Did Mr. Tyler report back to you  
23 as to what happened on his follow-ups?

24 A. He may have. I don't remember  
25 it in particular.

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1 Q. Were there discussions about the  
2 packages that B&W was using for generic cigarettes at  
3 any other presentation that you made to any customers?

4 A. There possibly may have been.

5 Q. Along the same lines as the  
6 discussions you had with Mr. Miazgowicz?

7 MR. PECK: Objection. I don't  
8 know what that means.

9 A. I'm not sure what you mean.

10 Q. Did any other customers raise  
11 the same -- any other customers to whom you made  
12 presentations comment about similarities between  
13 B&W's generic packages and other generic packages?

14 MR. PECK: Objection to the form  
15 of the question. You can answer.

16 A. Not that I recall.

17 Q. But they may have?

18 A. They may have. I don't remember  
19 any.

20 Q. But you didn't remember the  
21 Miazgowicz one until yesterday, right?

22 A. Correct.

23 Q. Directing your attention to  
24 Exhibit 9 to the first bullet, there's a reference to  
25 Mr. Miazgowicz saying the, quote, "money proposition

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1 is impressive." What was the money proposition?

2 A. It would have been our published  
3 rebate.

4 Q. Wouldn't have been anything  
5 other than the published rebate, would it?

6 A. No, sir.

7 Q. You didn't make any special  
8 offer to him, did you, other than what's published?

9 A. No, sir.

10 Q. You didn't offer him a Florida  
11 vacation or anything?

12 A. Pardon?

13 Q. You didn't offer him a Florida  
14 vacation?

15 A. No, sir.

16 Q. Or any other kind of vacation?

17 A. No, sir.

18 Q. Or an inventory build?

19 A. An inventory build?

20 Q. Any stickering, did you offer  
21 him any stickering?

22 A. No, sir.

23 Q. Any payments per carton other  
24 than the published ones if he would try out your  
25 product?

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1 A. No, sir.

2 Q. Directing your attention to the  
3 bottom bullet on the page where you say, "While it was  
4 not openly stated, Miazgowicz did show some concern  
5 with L&M's ability to continue to meet the demands  
6 that will now be placed on them due to RJR's Doral and  
7 now B&W<sup>s</sup> with black and whites."

8 How did he show concern about  
9 that without stating it?

10 A. Discussions as to Doral -- and  
11 again as I recall it, it was merely discussions on  
12 Doral and Brown & Williamson getting into the black  
13 and white business.

14 Q. Was there some discussion about  
15 Liggett's ability to survive in the generic  
16 marketplace?

17 A. I don't recall any.

18 Q. Was there any discussion about  
19 Liggett's financial strength or lack thereof?

20 A. None that I recall.

21 Q. Did you make any comments about  
22 Liggett?

23 A. Any comments about Liggett?

24 Q. Yes.

25 A. I'm not sure what you're asking

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1 me.

2 Q. Any comments about Liggett &  
3 Meyer Tobacco Company?

4 MR. PECK: About their prices,  
5 about their survival, about their financial condition?

6 Q. About anything?

7 MR. PECK: Did he mention the  
8 name Liggett? I mean, come on, can't you be more  
9 specific, Garret?

10 MR. RASMUSSEN: I can.

11 MR. PECK: Well, how about doing  
12 it?

13 A. There's a whole realm of things,  
14 you know. I'm not sure what you're asking.

15 Q. Did you discuss Liggett at the  
16 meeting?

17 A. Their rebate?

18 Q. Anything about Liggett?

19 A. Their rebate.

20 Q. Okay. What else?

21 A. I don't recall anything else.

22 Q. What did you say about Liggett's  
23 rebate?

24 A. I believe a comparison was made  
25 of Liggett's rebate versus our published rebate, and

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1 that was Liggett's rebate as we understood it.

2 Q. What was that?

3 A. I don't recall exact numbers.

4 Q. Are you sure that Liggett had a  
5 rebate as of May 30th, 1984?

6 A. Positively?

7 Q. Yes.

8 A. No.

9 Q. Are you aware of any generic  
10 rebates that were in existence prior to B&W's generic  
11 rebate schedule?

12 A. We had heard of Liggett having  
13 rebates.

14 Q. And what had you heard about  
15 that?

16 A. That they had a very mixed bag  
17 of rebates.

18 Q. What was the highest volume  
19 level to qualify for the highest rebate that you had  
20 heard about?

21 A. I don't really remember.

22 Q. I show you a document which  
23 we'll mark as Exhibit 10 which bears production number  
24 125418 through 125424 consecutively, which appears to  
25 be a presentation to Pontana Brothers dated November

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1 5, 1984.

2 (Greenier Exhibit 10 was marked  
3 for identification.)

4 (Off the record discussion.)

5 Q. Have you ever seen Exhibit 10  
6 before?

7 A. I may have.

8 Q. Did you make this presentation?

9 A. I'm not really sure.

10 Q. Do you recognize the document as  
11 a B&W presentation?

12 A. It says it is.

13 Q. Right. But I mean are you  
14 familiar with the format of B&W presentations in  
15 general?

16 A. Yes.

17 Q. Is this in the same format as  
18 the usual B&W presentation?

19 MR. PECK: That assumes there's  
20 a format for a usual presentation. It assumes there's  
21 a usual presentation. Objection to the question on  
22 that ground.

23 A. And I totally agree because they  
24 take all different formats.

25 Q. Is there anything about this

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1 document that would suggest it wasn't a presentation?

2 A. No.

3 Q. When you say they take all  
4 different formats, is that because they make all  
5 different types of offers?

6 A. No.

7 Q. Okay. I'll ask the court  
8 reporter to mark as Exhibit 11 a document bearing  
9 production number 068285.

10 MR. PECK: Do that number again?

11 MR. RASMUSSEN: 068285.

12 (Greenier Exhibit 11 was marked  
13 for identification.)

14 Q. I'll just ask you if you have  
15 ever seen that document before?

16 A. Other than yesterday?

17 Q. Yes.

18 A. I don't recall it.

19 Q. You see the column B&W samples  
20 needed?

21 A. Yes.

22 Q. Does that refresh your  
23 recollection as to whether you actually took a sample  
24 of the branded generics with you on your Pontana call?

25 A. No, it doesn't.

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B24 20252

1 Q. Prior to your call on Fontana  
2 did you meet with any other B&W people to prepare for  
3 the call?

4 A. Yes.

5 Q. How many meetings did you have  
6 to prepare for the call?

7 A. I can remember only one in  
8 particular.

9 Q. And what was that meeting?

10 A. With Mr. Tyler.

11 Q. And what did you and Mr. Tyler  
12 discuss at that meeting?

13 A. I believe approximate volumes.

14 Q. Did you have any meetings with  
15 Mr. Bores about the Fontana visit prior to the Fontana  
16 visit?

17 A. I may have. I don't remember  
18 one in particular.

19 Q. Okay. Exhibit 11 purports to  
20 list a number of people that were making visits. Do  
21 you recall whether there was ever a meeting of a  
22 number of people, all of whom are going to be making  
23 visits, on or about late May or early June 1984 to  
24 perspective customers?

25 MR. PECK: Rather compound and

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1 complex. Can you read it back, and let's see if it's  
2 clear enough.

3 MR. RASMUSSEN: The question is  
4 not compound at all.

5 MR. PECK: It's certainly long.

6 MR. RASMUSSEN: It is long.

7 MR. PECK: You'll give me that,  
8 won't you?

9 (The reporter read the record.)

10 MR. PECK: Objection to the  
11 form, but you can answer it.

12 A. I don't recall a particular  
13 meeting.

14 Q. Do you recall a general meeting?

15 A. No.

16 Q. Okay. There's no sort of pep  
17 rally before these visits?

18 MR. PECK: Objection to the  
19 form.

20 A. No.

21 MR. PECK: Note the laughter.

22 Q. And I'm just going to show you  
23 another document which we'll mark as Exhibit 12 which  
24 bears production number 095146, which purports to be a  
25 list of private label calls, and I'll simply ask you

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1 if you made the calls that appear to -- where you are  
2 listed as possibly making them?

3 (Greenier Exhibit 12 was marked  
4 for identification.)

5 A. The question was?

6 Q. Let's take them in order. The  
7 document<sup>s</sup> purports -- have you ever seen the document  
8 before?

9 A. Prior to yesterday, no, I don't  
10 recall it.

11 Q. Okay. In May, June, or July of  
12 1984 did you call on<sup>p</sup> Safeway?

13 A. No.

14 Q. This document suggests you might  
15 have called on Safeway on June 21, 1984, with Mr.  
16 Howells. Do you recall whether you did or not?

17 MR. PECK: Objection to the form  
18 of the question, but you can answer whether you made  
19 the call.

20 A. No.

21 Q. Are you sure -- you<sup>p</sup> recall --  
22 are you sure you did not make the call?

23 A. I recall not making the call.

24 Q. Okay. Did you call on Lucky<sup>s</sup>  
25 Stores on or about June 25, 1984?

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1 A. No.  
2 Q. Did you ever call on Lucky  
3 Stores with respect to generics?  
4 MR. PECK: Prior to August 31,  
5 '85.  
6 A. No, not that I recall.  
7 Q. Did you visit Albertson's on or  
8 about June 29, 1984?  
9 A. I may have. I called on  
10 Albertson's. I don't remember the exact date.  
11 Q. Okay. You had mentioned earlier  
12 that you had called on the Safeway Portland division  
13 store at some point. Approximately what time was  
14 that?  
15 A. I don't remember the exact time  
16 of it.  
17 Q. Could that have been in May,  
18 June or July of '84?  
19 A. It could have been, but I don't  
20 recall. This is not the same Safeway.  
21 Q. Okay. What Safeway is this?  
22 A. I'm assuming that that's Safeway  
23 corporate. That's what all of these are. Assumption  
24 on my part.  
25 Q. Okay. Is the Portland division

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1 also known as the Freemont division, or are those  
2 separate things?

3 A. Not to my knowledge.

4 Q. Were you ever scheduled to call  
5 on Lucky Stores?

6 MR. PECK: Scheduled to his  
7 knowledge obviously?

8 MR. RASMUSSEN: Yes.

9 A. To my knowledge, no.

10 Q. Were you ever scheduled to call  
11 on Safeway Stores?

12 A. To my knowledge, no.

13 Q. Okay. By Safeway Stores I mean  
14 the corporate headquarters now?

15 A. Yes.

16 Q. Did you ever call on Dillon  
17 Companies with respect to generic cigarettes?

18 A. Not that I recall, no.

19 Q. Did you ever call on Alpha Beta  
20 with respect to generic cigarettes?

21 A. Not that I recall, no.

22 Q. Von's?

23 A. Not that I recall, no.

24 Q. What about Ralph's?

25 A. Not that I recall, no.

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1 Q. Okay.  
2 MR. RASMUSSEN: Off the record.  
3 (Off the record discussion.)  
4 (A lunch break was taken at  
5 12:30.)  
6 Q. Did you place a call to  
7 Schille<sup>o</sup>, Inc., of Bay City, Michigan, on or about  
8 June 5th, 1984, make a call?  
9 A. Place a call?  
10 Q. Did you visit Schiller and make  
11 a presentation on or about that date?  
12 A. What was the date again, I'm  
13 sorry? There was some confusion.  
14 Q. Early June, 1984?  
15 A. Early June, 1984?  
16 Q. Yes.  
17 A. Somewhere in that time frame.  
18 Q. And did you make a similar  
19 presentation to the one you made at Fontana Brothers?  
20 MR. PECK: What do you mean by  
21 similar presentation?  
22 Q. Well, did you discuss B&W's  
23 generic program at that visit?  
24 A. I seem to remember, yes.  
25 Q. Did you discuss B&W's general

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11 packagings at that visit?

12 A. I may very well have. I don't  
13 recall exactly. I believe I did.

14 Q. What did you say?

15 A. I'm really not sure.

16 Q. Did you meet with Wynn Schiller?

17 A. Yes.

18 Q. Did he comment on the similarity  
19 of B&W's packages compared to Liggett packages for  
20 generics?

1 MR. PECK: Objection to the form  
2 of the question. You can answer.

3 A. I don't recall.

4 Q. Did you comment on the  
5 similarity between the packages?

6 MR. PECK: Objection to the form  
7 again. It's an assumption, a fact not in evidence.  
8 What he's really asking is did you comment on the  
9 package? Let's cut out the trick words.

10 A. I don't remember.

11 Q. But you do recall some  
12 discussion of packaging, you just don't remember the  
13 precise discussion?

14 MR. PECK: To be accurate what  
15 he said is he thinks there may have been discussion of

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1 packaging, but can't recall what was said. That's the  
2 testimony on the record already.

3 Q. Did you answer that one?

4 MR. PECK: There's no question  
5 to answer. It's asked and answered.

6 Q. Is your attorney's summary  
7 accurate?

8 A. Fairly accurate, yes.

9 Q. Fairly?

10 A. No, accurate.

11 MR. PECK: You got to keep me  
12 honest as well as keeping him honest.

13 Q. Now, Schiller is part of Trade  
14 Development Corporation, right?

15 MR. PECK: You're talking about  
16 now, then, when?

17 Q. Then as well as now?

18 A. On the date that I made the call  
19 I don't believe that they were.

20 Q. Okay. But they now are?

21 A. Yes.

22 Q. Let me show you a document which  
23 we'll mark as the next exhibit, Exhibit 13, which  
24 bears production numbers 155591 through 155601.

25 (Greenier Exhibit 13 was marked

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1 for identification).

2 Q. I'll simply ask you if you are  
3 familiar with this presentation, with this document?

4 A. No, I'm not familiar with it.

5 Q. Okay. Do you recall whether you  
6 made a -- this was not a document that you presented  
7 at Albertson's -- well, obviously it wasn't.

8 Did you make any subsequent  
9 calls on Albertson with respect to generic cigarettes?

10 A. Subsequent to when?

11 Q. The visit that you made in  
12 approximately May, June or July? I think you  
13 testified you visited that account at that time?

14 A. No, I did not go back.

15 Q. You did not go back?

16 A. No.

17 Q. Okay. Directing your attention  
18 to the second page of the exhibit, there's a regular  
19 rebate schedule listed. Do you know whether that's  
20 the -- that is the B&W rebate schedule that was in  
21 effect during some period of time in 1984, isn't it?

22 MR. PECK: Could I hear that  
23 question back, please?

24 (The reporter read the record.)

25 MR. PECK: Objection to the

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1 form. The document seems to indicate it's a 1985  
2 document. I think you may be either confused yourself  
3 or inadvertently --

4 Q. Do you know whether that's a  
5 rebate scale that was in effect at any time period?

6 A. I'm not sure.

7 MR. RASMUSSEN: Where do you see  
8 the date just to help me out if you see it?

9 MR. PECK: Well, there's a  
10 reference at the bottom of that page to May, June,  
11 July '85, and there are other references in the  
12 document which indicates it's got to be an '85  
13 document.

14 MR. RASMUSSEN: Oh, I see.

15 Q. Okay. Are you familiar with a  
16 B&W program or practice of paying five cents per  
17 carton to accounts during the month of May, June and  
18 July, 1985?

19 MR. PECK: I'm sorry. Could I  
20 hear the question back?

21 (The reporter reads the record.)

22 MR. PECK: Objection to the  
23 form. It assumes facts not in evidence at least in  
24 this deposition, but you can answer it.

25 A. I'm not familiar with it to my

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1 knowledge. I don't know of any.

2 Q. Are you familiar with any  
3 published or publicly -- well, I suppose that's  
4 unnecessary.

5 You do know, however, that  
6 during 1985 B&W had a volume rebate program in effect;  
7 isn't that right, for generics?

8 A. During 1985 that we had a volume  
9 rebate program?

10 Q. Yes.

11 A. Yes.

12 Q. And you also had a promotional  
13 reserve payment as indicated on Page 2 of the -- on  
14 the second page of this exhibit?

15 A. I believe we did.

16 Q. And a 5 percent increase, or a 5  
17 percent extra payment?

18 A. I'm not sure of it, no. I  
19 couldn't say for sure if we did or did not.

20 Q. Okay. So you don't know whether  
21 or not, in fact, all accounts are paid five cents per  
22 carton during the months of May, June or July in  
23 addition to the normal rebates, promotional reserves  
24 and 5 percent increase payments?

25 MR. PECK: Objection. Asked and

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1 answered. He said he's not familiar with any extra  
2 five cent program.

3 Q. So you don't know then, right?

4 A. I'm not familiar with it.

5 Q. Okay.

6 Q. Let me show you a document which  
7 we'll mark as Exhibit 14 which starts with production  
8 number 070705.

9 (Greenier Exhibit 14 was marked  
10 for identification).

11 MR. PECK: For the record it  
12 ends with number 070721.

13 Q. I'll ask you if you have ever  
14 seen that document before?

15 A. In its entirety?

16 Q. Yes, first in its entirety? And  
17 if you're looking through and you do see particular  
18 pages, you might as well just tell me.

19 A. On 070707, that particular graph  
20 I have seen not necessarily the words around it, but  
21 the graph.

22 070708 is a copy of the trade  
23 publication ad that I have seen.

24 Q. Okay.

25 A. 070710 --

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1 MR. PECK: I believe that's  
2 070719.  
3 A. Okay. 19.  
4 Q. Those pages that you have  
5 listed, are they the pages that you have seen before?  
6 A. Yes.  
7 Q. Have you seen the entire  
8 document before?  
9 A. No.  
10 Q. This is not a presentation that  
11 you made?  
12 A. No.  
13 Q. Okay.  
14 Q. I'm directing your attention to  
15 page 070711. There's a reference to a distributor  
16 support program. Does that have any meaning to you?  
17 A. What, the distributor support  
18 program?  
19 Q. Yes.  
20 A. Yes.  
21 Q. What was that program?  
22 A. Direct account incentive  
23 program.  
24 Q. Can you tell me how that  
25 program -- has that program been -- when did that

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1 program go into effect?

2 A. January 1st, 1985.

3 Q. Was it changed at any time  
4 between January 1, 1985, and August 1985 when --

5 A. Changed how?

6 Q. With the terms of the program or  
7 the -- was it changed in any respect, or was the same  
8 program in effect for the entire time period?

9 A. I believe so.

10 Q. Okay.

11 A. To the best of my knowledge.

12 Q. Okay. How did the program work?

13 MR. PECK: Objection to the  
14 form. It's a very vague and broad question.

15 Q. Okay.

16 MR. PECK: Not to mention the  
17 fact that you have got the document that explains how  
18 the program worked.

19 Q. Did the program pay two cents  
20 per carton or approximately two cents per carton to  
21 any customers?

22 A. Did it pay being in the past  
23 sense?

24 Q. No. I mean could customers  
25 qualify for two cents a carton by participating in the

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1 program, could certain customers?

2 MR. PECK: Objection to the form  
3 of the question. What do you mean by certain  
4 customers?

5 Q. Well, isn't it true that under  
6 the program some customers could get two cents per  
7 carton and other customers approximately one cent  
8 perfect carton depending on the class of trade that  
9 the customer was?

10 A. Yes.

11 Q. Okay. And what class of trade  
12 could qualify for the two cent per carton?

13 A. Grocery wholesalers and  
14 distributors.

15 Q. Is Safeway a grocery wholesaler  
16 or distributor?

17 A. No.

18 Q. Do you know whether Safeway was  
19 ever paid two cents per carton under the direct  
20 account incentive program?

21 A. No one has been paid yet.

22 Q. Do you know whether -- do you  
23 know whether any Safeway division has been told that  
24 it will be paid two cents per carton?

25 A. No, not to my knowledge.

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1 Q. Who would know what offer was  
2 made to the Safeway Freemont stores by B&W in  
3 connection with the direct account incentive program?

4 A. I really don't know. Whomever  
5 made the call.

6 Q. Okay. But you don't know who  
7 would have made the calls on that store?

8 MR. PECK: Objection to the  
9 form.

10 Q. Do you know who did make the  
11 call?

12 A. No, I do not.

13 Q. Did you read page 070711 as  
14 indicating that Safeway Freemont stores were offered  
15 two cents per carton?

16 MR. PECK: Objection. He's  
17 never seen the document before. How can he know that?  
18 Are you representing the document was even given to  
19 Safeway Freemont? Objection to the question.

20 A. I have no idea what was offered.

21 Q. What were your responsibilities  
22 for the direct account incentive program during 1985?

23 A. I was involved in the task force  
24 that was implementing the program.

25 Q. Who else was in that task force?

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1 A. Don Bores, Tom Wilson, Joe  
2 Dolen.  
3 Q. Joe Dolen?  
4 A. Uh-huh.  
5 Q. Has the task force met from time  
6 to time?  
7 A. Has it met?  
8 Q. Yes. Did you actually meet as a  
9 task force?  
10 A. We did.  
11 Q. On more than one occasion?  
12 A. Yes.  
13 Q. Okay. What did the task force  
14 do with respect to implementing --  
15 A. During which period of time?  
16 Q. During 1985?  
17 A. I'm not really sure that they  
18 met during 1985.  
19 Q. Did they meet during 1984?  
20 A. Yes.  
21 Q. What did they do in 1984 with  
22 respect to the direct account incentive program which  
23 I'll simply refer to as DAIP?  
24 MR. PECK: Objection to the  
25 form. Can you be more specific?

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1 Q. Can you answer the question?  
2 A. I'm not sure what you said.  
3 Q. Okay. Did the task --  
4 A. My joints are starting to  
5 stiffen up here a little.  
6 Q. Okay. Did the task force create  
7 the DAIP<sup>s</sup> program during 1984?  
8 A. By create, what do you mean  
9 create?  
10 Q. Devise it, propose it?  
11 A. Yes.  
12 MR. PECK: There were several  
13 phrases he used.  
14 A. Proposed.  
15 Q. You proposed it?  
16 A. Un-hun.  
17 Q. And to whom did the task force  
18 propose it to?  
19 A. Senior management.  
20 Q. And was your proposal adopted?  
21 A. Ultimately, yes.  
22 Q. In 1985 did you monitor the  
23 implementation of the program?  
24 MR. PECK: Are you referring to  
25 the witness personally?

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Q. Yes.

A. Yes.

Q. Now, who in the senior management did the task force make a recommendation to in 1984?

A. The task force?

Q. Yes.

A. Lanny Butler, Tommy Sandefur.

Q. Did the task force meet with them?

A. I seem to remember one occasion when the entire task force met with them.

Q. When was that? Late 1984?

A. I don't really remember exactly.

Q. What happened in the meeting? Who said what in substance?

A. Again I don't really remember the meeting all that well.

Q. Did the task force make a written recommendation?

A. A proposal.

Q. A written proposal?

A. (Affirmative nod.)

Q. Did you write the proposal?

A. Yes. With assistance from the

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1 other members of the task force.

2 Q. How long was the proposal?

3 MR. PECK: Pages you mean?

4 MR. RASMUSSEN: Yes.

5 A. I don't recall.

6 Q. Do you still have a copy of it?

7 A. I don't know.

8 Q. Do you know whether it's been  
9 produced to your attorneys for production in the case?

10 A. I have no idea.

11 Q. Have you produced it to your  
12 attorneys?

13 A. If it was in my files, they have  
14 it.

15 Q. Did that proposal make any  
16 reference to B&W generic cigarettes?

17 MR. PECK: What do you mean by  
18 any reference?

19 Q. Did it have any mention of B&W  
20 generic cigarettes in it?

21 A. Yes.

22 Q. Was there any discussion as to  
23 whether the DAIP program could help in the marketing  
24 of generic cigarettes?

25 MR. PECK: I'm sorry. Are you

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1 talking about in the proposal?

2 Q. Yes, either -- in the proposal?

3 A. I don't recall that it had  
4 anything in there in particular about the marketing of  
5 generic cigarettes.

6 Q. Was there any discussion of that  
7 issue at the meeting with the task force with senior  
8 management?

9 A. Specifically and selectively  
10 just about generics, I don't recall.

11 Q. Did you keep any minutes of the  
12 task force meetings?

13 A. Not that I recall, no.

14 Q. Did you keep any personal notes  
15 yourself of those task force meetings?

16 A. Not that I recall.

17 Q. Do you recall whether anyone  
18 else that was in the task force did?

19 A. By notes I'm not sure --

20 Q. Not formal notes, just any type  
21 of notes?

22 A. I really don't know if they did  
23 or not other than to do projects.

24 Q. Do you know whether anyone made  
25 notes at the meeting that the task force had with Mr.

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1 Butler and Mr. Sandefur?

2 A. I don't believe anyone did, but  
3 I'm not sure.

4 Q. When will payments be made under  
5 the DAIP program?

6 MR. PECK: Objection. Since  
7 we're obviously getting past August 31, '85, I will  
8 only allow the witness to answer this one question if  
9 you agree it's not a waiver of our position.

10 MR. RASMUSSEN: I agree it's not  
11 a waiver.

12 A. I'm really not sure. Within the  
13 next couple of weeks.

14 Q. Okay.

15 A. I am not involved with it any  
16 more.

17 Q. When did you cease having  
18 involvement with it?

19 MR. PECK: Again, I'll let him  
20 answer if it's not a waiver.

21 MR. RASMUSSEN: Yeah. It's not  
22 a waiver.

23 A. October. Upon the change of the  
24 positions.

25 Q. Okay. Now, you said that in

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1 1985, at least up until October you monitored the  
2 program; is that correct?

3 A. How do you mean monitor?

4 MR. PECK: Well, you move too  
5 quickly. I'm objecting to the extent you're trying to  
6 summarize his prior testimony. That's not an accurate  
7 summary.

8 Q. What did you do in 1985 with  
9 respect to the program and its implementation?

10 A. On a quarterly basis submit only  
11 to the field a check to see who was participating in  
12 the program.

13 MR. PECK: By check do you mean  
14 a check that can be cashed for money, or do you mean  
15 you were checking on something?

16 A. No, an audit of who was --

17 Q. You would ask people in the  
18 field to tell you who was participating?

19 A. Uh-huh.

20 Q. Did you ask for that in writing?

21 A. Yes.

22 Q. And did -- I assume you got some  
23 reports from the field on people that were  
24 participating?

25 A. Yes.

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Q. Did those reports indicate which customer category, in other words, where the customer was participating in -- was eligible to get two cents per carton as opposed to one cent per carton?

MR. PECK: Objection to the form.

A. Didn't state whether they would get two cents or one cents.

Q. Did they state what class of trade the customer was for DAIP purposes?

A. Yes.

Q. Did you make any effort to make sure that customers were placed in the proper class of trade categories for DAIP purposes?

MR. PECK: You referring to the witness personally?

MR. RASMUSSEN: Yes.

A. No.

Q. Do you know if anyone did?

A. I'm really not sure. I was not involved in that.

Q. Who was involved with that?

A. I can't -- I really don't know.

Q. Are you aware of any discussions about what class of trade a customer should be

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1 considered for the purposes of the DAIP program?

2 MR. PECK: I don't understand  
3 that.

4 Q. Are you aware of any discussions  
5 concerning the possibility of classifying a customer  
6 in a different category of trade for DAIP purposes  
7 than the customer normally would be classified under?

8 MR. PECK: Under -- your  
9 question trailed off.

10 MR. RASMUSSEN: Under normal  
11 circumstances?

12 MR. PECK: I don't know what  
13 that means.

14 MR. RASMUSSEN: For  
15 classification purposes?

16 MR. PECK: I don't know what  
17 that means. If you understand the question, you can  
18 answer.

19 A. Let me rephrase it and see if I  
20 understand it. Are you saying am I aware of any  
21 changes made to a customer's class of trade?

22 Q. For DAIP purposes?

23 A. I am not aware of any.

24 Q. B&W does keep records showing  
25 what class of trade it considers customers to fall

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1 under, doesn't it, apart from the DAIP program?

2 A. Yes.

3 Q. You have a numerical code that  
4 indicates the category of trade, isn't that right?

5 A. Class of trade.

6 Q. Class of trade?

7 A. Yes.

8 Q. And to the best of your  
9 knowledge there have not been deviations from that  
10 classification ~~to~~ from that normal classification with  
11 respect to the implementation of the DAIP program?

12 O MR. PECK: Asked and answered.

13 Objection.

14 A. To the best of my knowledge  
15 there's been none.

16 Q. If Brown & Williamson were to  
17 pay a two cent per carton payment to Safeway, that  
18 would be not in accordance with the DAIP program,  
19 would it?

20 MR. PECK: Objection. I don't  
21 understand what you're saying there.

22 Q. If, as the last exhibit  
23 suggests, and I'm not saying it establishes it, but  
24 if, in fact, two cents per carton is to be paid to  
25 a Safeway division, that would not be in accordance

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1 with the normal DAIP program procedures?

2 MR. PECK: Objection to the form  
3 of the question. You can answer.

4 A. Not necessarily.

5 Q. How could it be?

6 A. If the customer were to perform  
7 everything that was required -- in this case, Safeway,  
8 perform all that was required of the class of trade  
9 that would qualify for the two cent rebate, then they  
10 could earn that two cent rebate.

11 Q. What would customers have to --  
12 what performance would be required for a customer that  
13 did not normally fall within the class of trade that  
14 qualifies for two cents per carton to qualify for the  
15 two cents per carton?

16 A. They would have --

17 MR. PECK: Let me just object  
18 there. You keep using the two cents per carton I  
19 presume as a shorthand for a certain category under  
20 DAIP?

21 MR. RASMUSSEN: Yes, that's what  
22 I'm doing.

23 MR. PECK: I'm not sure that  
24 that is a factual, correct -- I'm not sure it is.  
25 factually correct that the amount has been established

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1 as two cents, but as long as we understand what we're  
2 talking about.

3 A. What Mr. Peck is saying is  
4 absolutely correct. The two cent or one cent is not a  
5 hard and fast number.

6 Q. Okay. What are the two -- how  
7 would you describe the two categories?

8 A. You have two classes of trade,  
9 distributors and grocery wholesalers and then all  
10 other classes of trade that do business with Brown &  
11 Williamson Tobacco.

12 Q. Okay. And as a rule of thumb  
13 distributor and grocery wholesalers who participate in  
14 DAIP can qualify for approximately two cents per  
15 carton?

16 A. Approximately.

17 Q. While all others qualify for  
18 approximately one cent per carton; is that right?

19 A. They can qualify for one cent,  
20 or, in fact, if they do everything that grocery  
21 wholesalers and distributors do that is required of  
22 them in the program, they could earn that higher  
23 level.

24 Q. In other words, if all of the  
25 others would stock the brands required to be stocked

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1 by a distributor and a grocery wholesaler to qualify  
2 for the DAIP program, then all of the others could  
3 qualify for the two cent -- approximately two cent  
4 payment?

5 MR. PECK: Objection. Are you  
6 asking if that's one criterion or the only criterion  
7 or --

8 Q. Is that one criterion to start  
9 with?

10 A. That is one criterion.

11 Q. Are there other criterion?

12 A. Yes.

13 Q. What are the other criteria?

14 A. I believe -- and I'd have to  
15 refresh my memory on this because it's been a year or  
16 so since we worked on this -- that they would have to  
17 perform one or two distribution and/or out of stock  
18 drives.

19 I also believe a third one was  
20 that they would have to maintain in their order books  
21 all of those brand styles listed on an ongoing basis  
22 of the brands that B&W manufacturers or requires for  
23 that particular level.

24 Q. Have you ever seen a written  
25 document that says that the nondistributor and

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1 nongrocery wholesale customers can qualify for the  
2 approximately two cent category if they perform the  
3 criteria that you have stated?

4 A. I don't recall one. I don't  
5 remember seeing one.

6 Q. Are you familiar with any steps  
7 that have been taken to inform customers who are not  
8 distributors or grocery wholesalers that they too can  
9 qualify for an approximately two cent per carton  
10 payment if they meet the criteria that the  
11 distributors and grocery wholesalers must meet?

12 A. You lost me about the third part  
13 of that.

14 MR. RASMUSSEN: Okay.  
15 Let's try to read that one back.

16 (The reporter read the record.)

17 A. I'm not familiar with any.

18 Q. Do you know if any account as a  
19 nondistributor or a nongrocery wholesaler has been  
20 told that it can qualify under the DAIP program for  
21 approximately two cents a carton payment if they meet  
22 all the criteria that the distributors and grocery  
23 wholesalers must meet?

24 MR. PECK: Can you read that  
25 back again?

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1 (The reporter read the record.)

2 (Off the record discussion.)

3 Q. Are you aware of any account who  
4 is not a distributor or a grocery wholesaler who has  
5 indeed been told that it is eligible under the DAIP  
6 program to qualify for approximately two cents per  
7 carton<sup>s</sup> payments if they meet the criteria that  
8 distributors and grocery wholesalers must meet to get  
9 the two cent -- to get the approximate two cent  
10 payment?

11 MR. PECK: Could you read that  
12 one back?

13 MR. PECK: Objection to the  
14 form. Are you asking for a specific name of a  
15 customer?

16 MR. RASMUSSEN: No. Just  
17 whether he knows whether any account has been told  
18 that it -- of this possibility?

19 A. I don't know of any.

20 Q. Do you know whether any account  
21 that is not a distributor or a grocery wholesaler  
22 will, in fact, be paid at the distributor and  
23 groceries wholesaler level under the DAIP program?

24 MR. PECK: Again, I'd like it  
25 read back.

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1 (The reporter read the record.)

2 A. I don't know of any.

3 Q. Have you heard any discussions  
4 about that possibly happening?

5 A. None that I can recall.

6 Q. Have you been party to any  
7 discussions concerning the criteria that  
8 nondistributors and nongrocery wholesalers must meet  
9 in order to qualify for approximately two cents per  
10 carton under the DAIP program?

11 A. Now, I have got to ask for it to  
12 be read back.

13 MR. RASMUSSEN: Go ahead.

14 (The reporter read the record.)

15 A. Yes.

16 Q. What discussions have those  
17 been?

18 A. I seem to remember one with our  
19 counsel, Bart Freedman.

20 MR. PECK: Don't say anything  
21 else on the subject. Obviously that's privileged.  
22 Off the record.

23 (Off the record discussion.)

24 Q. Do you have any knowledge of --  
25 with respect to stickering programs that may have been

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1 offered to Safeway divisions during 1985 by B&W?

2 MR. PECK: Pre August 31?

3 Q. Pre August 31?

4 A. To Safeway?

5 Q. Yes.

6 A. None that I know of. I don't  
7 recall any.

8 Q. Okay. Did you discuss the DAIP  
9 program with the Safeway Portland division when you  
10 called on that division?

11 A. I don't believe so, no. I don't  
12 think it was even in effect.

13 Q. Okay. Did you discuss  
14 stickering with the Portland -- with the Safeway  
15 Portland division?

16 A. I do not believe so.

17 Q. For the purposes of paying  
18 quarterly volume rebates do you know whether all  
19 Safeway divisions are added together to determine the  
20 total volume or whether each division is paid  
21 separately according to each division's volume?

22 MR. PECK: What time period in  
23 case they have changed?

24 Q. In 1984 start with?

25 A. I really don't know.

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1 Q. What about in '85?  
2 A. Through August 31st?  
3 Q. Yes.  
4 A. I really don't know.  
5 Q. Have you ever looked at check  
6 edit reports? Do you know what check edit reports  
7 are?  
8 A. Prior to August 31st?  
9 Q. Yes.  
10 A. No.  
11 Q. Or check requests?  
12 A. I know what they are.  
13 Q. Okay. Did you look at them?  
14 A. Prior to August 31st?  
15 Q. Yes.  
16 A. No.  
17 MR. RASMUSSEN: Why don't we  
18 take a break now?  
19 (A short break was taken.)  
20 Q. I show you a document that we  
21 will mark as the next exhibit, which is 15. It bears  
22 production number 088826.  
23 (Greenier Exhibit 15 was marked  
24 for identification.)  
25 Q. You wrote Exhibit 15, didn't

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1 you?

2 A. Yes, sir.

3 Q. And you, in fact, called on Stop  
4 & Shop companies on or about September 1984?

5 A. I believe that was the time  
6 frame. I'm not really sure. The letter is  
7 dated there, so --

8 Q. What was the purpose of your  
9 visit to Stop & Shop?

10 A. Main purpose?

11 Q. Yes.

12 A. To discuss direct account  
13 incentive program, type of programs.

14 Q. When you say type of programs,  
15 did you discuss more than -- you know, alternatives to  
16 the direct account incentive program that we have  
17 already discussed?

18 MR. PECK: Objection to the  
19 form.

20 Q. Well, was there more than one  
21 DAIP program?

22 A. No.

23 MR. PECK: There wasn't any at  
24 that time.

25 A. There was not any at that time.

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1 Q. So you were there to discuss  
2 what might be coming up ahead?

3 A. No.

4 Q. What were you going to discuss  
5 about DAIP?

6 A. What would be appropriate.

7 Q. What type of program would be  
8 helpful to the account?

9 A. Yes.

10 Q. Okay.

11 Q. Was Stop & Shop carrying B&W  
12 generics at the time?

13 A. I really don't remember or  
14 recall, but according to the letter they were not.

15 Q. Did you discuss whether they  
16 might carry B&W generics if there were a program in  
17 effect such as the DAIP program?

18 A. That's a possibility, but I  
19 really don't remember.

20 Q. Why is that a possibility?

21 MR. PECK: Anything is a  
22 possibility.

23 Q. Well, do you have some basis for  
24 thinking that there might have been some discussion on  
25 that?

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1 A. No, other than truly anything is  
2 a possibility.

3 Q. Did you ever present the DAIP  
4 program at any time as an inducement for an account to  
5 carry generics?

6 MR. PECK: We're talking pre  
7 August 31 as usual?

8 MR. RASMUSSEN: Yes.

9 A. Not that I recall. Me  
10 personally we're talking?

11 Q. Are you aware of anyone doing  
12 that? No?

13 A. I'm thinking.

14 Q. On, okay.

15 A. No, I don't know for sure.

16 Q. Was there any discussion about  
17 at any time with anyone either within the company or  
18 outside the company which you're aware of at which  
19 there was discussion of whether the DAIP program could  
20 be helpful to inducing accounts to carry generics?

21 MR. PECK: Objection to the form  
22 of the question. What do you mean by induce?

23 Q. Well, was there ever any  
24 discussion that you're aware of about the possibility  
25 that the DAIP program might cause an account to stock

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1 generics that wasn't already stocking B&W generics?

2 A. Not that I know of. I really  
3 can't remember any in particular.

4 Q. Do you ever recall the term  
5 leverage being used in conjunction with the DAIP  
6 program?

7 A. I don't recall any specific  
8 instance, no.

9 Q. But obviously one purpose of the  
10 DAIP program was to get an account to carry B&W  
11 cigarettes that the account -- that an account  
12 normally wouldn't carry, isn't that right?

13 A. No.

14 Q. Wasn't one purpose of the DAIP  
15 program to get accounts to purchase other types of B&W  
16 cigarettes besides the types they already were  
17 stocking?

18 A. Yes.

19 Q. And the other types includes  
20 generics, doesn't it?

21 A. It could. The account could  
22 very well have already been stocking generics, our  
23 generics.

24 Q. Besides the possibility of a  
25 DAIP program, what else did you discuss with the Stop

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1 & Shop people on or about September 1984?

2 A. I do recall some part of the  
3 conversation dealing with generics.

4 Q. You were trying to persuade the  
5 account to try the generics at least, isn't that  
6 right?

7 A. I vaguely remember that that was  
8 part of the conversation.

9 Q. Since your visit has the account  
10 purchased any B&W generics?

11 MR. PECK: Prior to August 31,  
12 '85.

13 A. I'm really not sure.

14 Q. Did anyone accompany you on your  
15 visit to Mr. Daly of Stop & Shop?

16 A. Yes.

17 Q. Who?

18 A. Arthur Flynn.

19 Q. Was Mr. Gawley there also?

20 A. No, I don't believe so.

21 Q. Who is Mr. Gawley?

22 A. What position?

23 Q. Yes.

24 A. Area director.

25 Q. Okay. For that geographic area?

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B24 2029f

1 A. Yes.  
2 Q. Did you visit Stop & Shop in  
3 part because you were a friend of Mr. Daly from the  
4 time that you worked in Boston?  
5 A. No.  
6 Q. But, indeed you were a friend of  
7 his?  
8 A. I -- well, define friend. Did I  
9 know him --  
10 Q. Yes.  
11 A. -- through business? Yes.  
12 Q. What I'm trying to understand is  
13 why you decided to -- I mean, it seems to me -- am I  
14 correct in saying that you made relatively few calls  
15 on accounts once you became national sales manager?  
16 MR. PECK: What do you mean by  
17 relatively few?  
18 Q. Okay. It was not a routine  
19 practice?  
20 MR. PECK: What do you mean by  
21 it wasn't a routine practice? Objection to the form.  
22 Q. Go ahead and try to answer it.  
23 A. I made sales calls.  
24 Q. Okay. Did you mostly make sales  
25 calls to accounts that you had been -- that you had

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1 called upon in earlier jobs at B&W?

2 MR. PECK: Mostly meaning for 50  
3 percent of the time, 90 percent?

4 Q. More than 50?

5 A. Not necessarily.

6 Q. So in other words, there was no  
7 conscious plan that you would concentrate your visits  
8 on accounts that you already had established some  
9 relationship with as a result of your past?

10 A. Conscious?

11 MR. PECK: Objection to the  
12 form. You're assuming that there was any such  
13 concentration. The question assumes a fact not in  
14 evidence.

15 MR. PECK: You want to read it  
16 back, please?

17 (The reporter read the record.)

18 A. General working as a national  
19 accounts manager?

20 Q. Yes.

21 A. It was no --

22 Q. At the meeting that you had with  
23 Stop & Shop did they -- did anyone employed by Stop &  
24 Shop tell you why the account had not purchased B&W  
25 generics in the past or prior to that date?

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1 A. Not that I recall.

2 Q. Did Mr. Daly or anyone else at  
3 Stop & Shop express any concerns about B&W generics to  
4 you at that meeting?

5 MR. PECK: What do you mean by  
6 concerns?

7 Q. Problems that he had with  
8 stocking it?

9 A. Not that I recall, no.

10 Q. Also in the fall of 1984 you  
11 visited Super-Valu stores, isn't that right?

12 A. I remember making a call to  
13 Super-Valu, yes.

14 Q. Did you discuss the possibility  
15 that B&W would be offering a DAIP program or something  
16 like it in that call to Super-Valu?

17 A. I believe so, yes.

18 Q. Was one purpose of the visit to  
19 find out what Super-Valu's reaction was to such a  
20 program?

21 A. When you say what the reaction  
22 was --

23 Q. Whether they thought it was a  
24 good idea or not a good idea to have a DAIP program?

25 A. Yes, that was one of the

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1 purposes.

2 Q. What comments did anyone -- what  
3 comments did Super-Valu people make with respect to  
4 the proposed DAIP program?

5 A. I don't really recall what  
6 comments were made.

7 Q. Was Super-Valu stocking B&W  
8 generics prior to the time of your visit?

9 A. I'm really not sure.

10 Q. Did you ask whether Super-Valu  
11 might stock generics if B&W did have a program such as  
12 a DAIP program?

13 MR. PECK: Objection, since they  
14 might have been carrying it.

15 A. I really don't know. I don't  
16 know if I did or didn't because I don't know if they  
17 were carrying them or not.

18 Q. Do you know whether you did that  
19 at Stop & Shop?

20 A. No, I really don't.

21 Q. Let me show you a document which  
22 we will mark as Exhibit 16, which bears production  
23 numbers 070075 through 070709.

24 (Greenier Exhibit 16 was marked  
25 for identification.)

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1 A. Okay.  
2 Q. Have you seen any pages of that  
3 exhibit before?

4 A. Prior to yesterday?

5 Q. Yes.

6 A. I did not remember it.

7 Q. Okay. Directing your attention  
8 to the second page of the exhibit, .070076, does that  
9 page refresh your recollection with respect to a  
10 meeting you might have had with Super-Valu stores in  
11 the fall of 1984?

12 o MR. PECK: Objection. There was  
13 no prior recollection needing to be refreshed, but  
14 other than objecting --

15 MR. RASMUSSEN: We don't have  
16 any trouble with that.

17 MR. PECK: Other than objecting  
18 to the form, you can answer the question.

19 A. Other than talking about  
20 distribution support program or what was later called  
21 DAIP, that was the purpose of my call. That's mainly  
22 what I remember about it.

23 Q. Okay. What were the major  
24 issues expressed during the meeting that needed to be  
25 resolved?

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B24 20295

- 1 A. You're referring to Paragraph 2?
- 2 Q. Yes.
- 3 A. I really don't recall.
- 4 Q. Did they have anything to do  
5 with generics?
- 6 A. I really don't recall.
- 7 Q. Now, I want to show you a  
8 document which we will mark as Exhibit 17 bearing  
9 production numbers 124542 through 124549, which  
10 appears to be a presentation made to Super-Valu on  
11 November 7, 1984.
- 12 o (Greenier Exhibit 17 was marked  
13 for identification.)
- 14 A. Okay.
- 15 Q. Okay. Is this a presentation  
16 that you made at Super-Valu at the time of your visit?
- 17 A. I'm really not sure. It appears  
18 that way, but I couldn't state for a sure, for a fact  
19 that it is.
- 20 Q. Does this document refresh your  
21 recollection of anything that happened at that meeting  
22 with Super-Valu?
- 23 A. No, other than it refreshes that  
24 they had a lot of distribution gaps.
- 25 Q. Okay. Was Super-Valu stocking

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1 generics at the time?

2 A. I don't recall.

3 Q. When you say distribution gaps,  
4 what do you mean?

5 A. Well, if you go to Page 124546,  
6 Super-Valu, Miami, Florida, there's one, two, three,  
7 four, five, six, seven, eight, nine, ten brand styles  
8 of established brands that that one house is not  
9 stocking.

10 Q. What is listed on pages 024546  
11 and 47 --

12 MR. PECK: You messed up the  
13 number, 12546 and 7.

14 Q. The distribution gap are the  
15 brand styles that are not being carried at the houses,  
16 right?

17 A. Yes.

18 Q. Okay. Does the zero indicate  
19 such as appears across from Super-Valu in Fargo, North  
20 Dakota, indicate that that Super-Valu store has full  
21 distribution of B&W cigarettes?

22 A. That's what it appears to be.

23 Q. Okay.

24 A. At least on established brands.  
25 I'm not sure otherwise, but on established brands.

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Q. Was there some discussion at the meeting about whether Super-Valu could have a private label from B&W?

A. At this meeting here?

Q. Yes.

A. I really don't recall.

Q. Do you recall whether that was the major concern expressed by Super-Valu?

A. No, I don't really recall.

Q. Now, whose handwriting is it on the first page of the exhibit?

A. I do not know.

Q. At the meeting did you actually announce the DAIP program that was to go into effect in 1985?

MR. PECK: Are you saying did he --

Q. Announce it, announce the program?

MR. PECK: Announce the exact program that went into effect in '85?

MR. RASMUSSEN: Yes, yes.

A. I'm really not sure because I am confused here on these dates. Is this the same date that we have been talking about, the November 7th?

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1 Q. It's the same --

2 A. Yeah.

3 Q. -- date as on the preceding  
4 exhibit.

5 A. Okay. I'm not sure if it was  
6 the same program that we went with. It appears to be,  
7 yes.

8 Q. It would appear then that the  
9 program had been adopted by B&W as of November 7,  
10 1985, wouldn't it?

11 MR. PECK: Objection.

12 A. I'm not sure.

13 Q. I'll show you what we'll mark as  
14 the next exhibit, which is Exhibit 18, a document  
15 bearing production numbers 070063-070074.

16 (Greenier Exhibit 18 was marked  
17 for identification.)

18 MR. PECK: Is that two copies of  
19 the same page?

20 A. That's what it looks like. Page  
21 2, Page 2.

22 A. Okay.

23 Q. Are you familiar with this  
24 document?

25 A. No.

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B24 20299

1 Q. You didn't go back to Super-Valu  
2 after the November 7th presentation, did you?

3 A. Prior to August 31st?

4 Q. Yes.

5 A. No.

6 Q. Directing your attention to the  
7 second page of the exhibit, there's a reference to  
8 a -- on the second paragraph of the page that -- to  
9 Brown & Williamson conducting a consumer research on  
10 generic product offerings comparing B&W generics to  
11 competitive generic products. Do you see that?

12 A. Uh-huh, yes.

13 Q. Are you aware of that consumer  
14 research that was conducted?

15 A. I am not knowledgeable of it,  
16 no.

17 Q. Do you know when it was  
18 conducted?

19 A. I have no knowledge of it.

20 Q. Do you know whether B&W has  
21 represented that -- has made presentations concerning  
22 that consumer research to customers?

23 A. I have no knowledge of it. None  
24 that I can recall.

25 Q. You have never used -- made

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1 representations about consumer research showing that  
2 B&W generics compare favorably with competing  
3 generic products, have you?

4 A. Not that I remember.

5 Q. At any time have you made  
6 comparisons between the quality of -- have you made  
7 comparisons to customers between the quality of B&W  
8 generics and the quality of Liggett generics?

9 A. Not that I remember.

10 Q. Directing your attention to page  
11 070066 of the exhibit under the heading Brown &  
12 Williamson Tobacco Corporation rebate structure for  
13 generic cigarettes, is that the -- and directing your  
14 attention to the regular rebate line running from 40  
15 cents to 60 cents, is that the volume rebate offer  
16 which B&W had in place during the third quarter of  
17 1984?

18 A. I really don't remember.

19 Q. Do you know whether rebates --  
20 any rebates were paid to accounts based on anything  
21 other than actual volume during the applicable  
22 quarter?

23 MR. PECK: When are you talking  
24 about?

25 Q. During 1984, for the third or

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1 fourth quarter of 1984?

2 A. No, I do not know of any.

3 Q. Are you aware of any discussions  
4 of that happening?

5 A. No, I don't know of any.

6 Q. Do you know whether or not  
7 Super-Vafu was paid a higher rebate than its volume  
8 qualified it for during either the third or fourth  
9 quarters of 1984?

10 MR. PECK: I think he's already  
11 testified he doesn't know if they were taking  
12 generics.

13 A. I don't know if they were taking  
14 our generics. I don't know what volume rebate they  
15 were paid.

16 Q. I'll show you a document which  
17 we will have the court reporter mark as Exhibit 19  
18 bearing production number 088798.

19 (Greenier Exhibit 19 was marked  
20 for identification.)

21 Q. Have you seen that document  
22 before?

23 A. Yes.

24 Q. Did you make any calls to TDC on  
25 or -- during the spring of 1985?

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B24 20302

1 A. Yes, I did.

2 Q. Okay. There's a reference in  
3 the fourth paragraph to the account being anxious and  
4 excited about earning another 2.6 million in profits.  
5 Do you know what that reference is to?

6 A. Yes, I do.

7 Q. What is it?

8 A. Filling their distribution gaps  
9 at retail with Brown & Williamson established brands.

10 Q. Does it have anything to do with  
11 the DAIP program?

12 A. It may have only from the  
13 context that it would have increased their overall  
14 volume.

15 Q. Do you know how the 2.6 million  
16 was calculated?

17 A. I'm not really sure.

18 Q. Does it include rebates that B&W  
19 paid to TDC, volume rebates for generics?

20 MR. PECK: You can answer.

21 A. I'm not really sure.

22 Q. Okay.

23 A. I don't believe so, but I'm not  
24 really sure.

25 Q. Does it include DAIP payments?

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824 20303

1 A. I'm not really sure.

2 Q. Do you have any understanding  
3 about what it does include?

4 MR. PECK: He already answered  
5 that.

6 A. I did.

7 Q. What was it?

8 A. Filling of distribution gaps and  
9 out of stocks of Brown & Williamson established  
10 brands.

11 Q. How does that translate into 2.6  
12 million in extra profits?

13 A. By simply filling the numbers of  
14 distribution gaps that they had out there on Brown &  
15 Williamson brands at retail,

16 Q. Did you offer to pay TDC some  
17 money if they would fill the gaps?

18 A. No, sir. That's based upon  
19 their sales and their normal margins.

20 Q. It's not based upon any payment  
21 that B&W would make to TDC?

22 A. I don't believe it is, no.

23 Q. Okay. I'll show you a document  
24 which I'll ask the court reporter to mark as Exhibit  
25 20 bearing production numbers 087367 through 087384.

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824 20304

1 and I'll ask you if you have ever seen that document  
2 before?

3 (Greenier Exhibit 20 was marked  
4 for identification.)

5 Q. Are you familiar with the  
6 exhibit?

7 A. Yes.

8 Q. Did you make that presentation  
9 to Trade Development Corporation or to TDC  
10 Corporation?

11 A. Yes.

12 Q. Approximately when did you make  
13 that presentation?

14 Q. I'm really not sure.

15 Q. Did the presentation have  
16 anything to do with the 2.6 million figure referred to  
17 in Exhibit 19?

18 A. No.

19 Q. Directing your attention to page  
20 087371, does that page refresh your recollection as to  
21 when you may have made the presentation?

22 A. Well, I would say it was after  
23 second quarter.

24 Q. Okay.

25 A. After second quarter sometime.

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B24 20305

1 Q. Second quarter of 1985?  
2 A. Yes.  
3 Q. Directing your attention to page  
4 087372, there's a reference to TDC, possibly offering  
5 an incentive of \$10,000?

6 A. Yes.

7 Q. Do you know whether that was  
8 ever done?

9 A. I am not sure if the program was  
10 followed through on.

11 Q. And then at the bottom of the  
12 page there's a reference to, "As a bonus Brown &  
13 Williamson would take the top sales manager and  
14 manager of each of the two winning houses on a golf  
15 outing in Florida." Do you see that?

16 A. Yes.

17 Q. Was that ever followed through  
18 on?

19 A. Not to my knowledge, no.

20 Q. Was any other customer to your  
21 knowledge ever offered a similar bonus?

22 MR. PECK: What do you mean by  
23 similar?

24 Q. Did Brown & Williamson ever  
25 offer any other customer to take the top sales person

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824 20306

1 and manager or take any employees of a customer on a  
2 trip to Florida?

3 A. There may very well have been.

4 Q. Are you aware of any others?

5 A. I know of other customers that  
6 have gone to Florida.

7 Q. Which other customers are they?

8 A. Revco, a member of Revco  
9 Corporation.

10 Q. When was that?

11 A. I'm not really sure.

12 Q. Do you know what year it was in?

13 A. 1985.

14 Q. What was the name of the  
15 Revco individual that went to Florida?

16 A. I believe it was Allen Jones.

17 Q. Did B&W pay for his trip to  
18 Florida?

19 A. I'm really not sure of the  
20 details.

21 Q. What's Allen Jones' position at  
22 Revco?

23 A. I'm not really sure what it is  
24 now.

25 Q. In 1985 did he play any role in

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B24 20306A

1 decisions by Revco as to whether or not to buy B&W  
2 generic cigarettes to your knowledge?

3 A. I don't really know.

4 Q. Did you have any discussions  
5 with Mr. Jones in 1985?

6 MR. PECK: About?

7 Q. About anything?

8 A. Yes.

9 Q. How many?

10 MR. PECK: Now, let's find out  
11 if they were about generics first before we get too  
12 far afield here.

13 Q. Well, how many?

14 MR. PECK: You can answer.

15 A. One.

16 Q. What was that about?

17 MR. PECK: Hold it. Pre -- do  
18 you recall when it was, and was it before or after  
19 August 31?

20 THE WITNESS: It was before  
21 August 31st.

22 MR. PECK: Okay.

23 A. Permanent package merchandising  
24 contract.

25 Q. Did B&W generic cigarettes come

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824 20307

1 up in the discussion?

2 A. No, I don't believe they did.

3 Q. Did Mr. Jones' trip to Florida  
4 come up in the discussions?

5 A. I do not recall it. No.

6 Q. Now, what other customers have  
7 taken trips to Florida to your knowledge during 1985?

8 MR. PECK: I think you may want  
9 to rephrase that. Are you asking about the entire  
10 tourism of Florida unrelated to anything?

11 Q. What other customers  
12 might have been offered and given trips to Florida by  
13 B&W?

14 MR. PECK: Objection to the  
15 form. First of all, might have, anybody might have.  
16 I think what you want to know is who was.

17 Secondly, you use the term  
18 other, and there was no testimony that Mr. Jones' trip  
19 was paid for by Brown & Williamson. Would you  
20 rephrase the question?

21 Q. What other customers do you  
22 think went to Florida at B&W's expense?

23 MR. PECK: Objection to the  
24 form. Again you used the term other. There is no  
25 testimony that any customer has gone to Florida at B&W

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124 20308



1 expense. It assumes a fact not in evidence.

2 Q. Okay.

3 A. I wholeheartedly agree. I don't  
4 know any of the details.

5 Q. What other customers might have  
6 been offered a trip to Florida as an inducement for  
7 selling B&W products?

8 MR. PECK: Objection to the  
9 form. Again you're asking might have.

10 MR. RASMUSSEN: I am.

11 MR. PECK: Question is  
12 ridiculous. Anybody in the world might have been  
13 anything. It's like is anything possible. Question  
14 can't be answered intelligently.

15 MR. RASMUSSEN: We'll see.

16 MR. PECK: Why don't you  
17 rephrase the question? Are you refusing to rephrase  
18 the question?

19 MR. RASMUSSEN: Yes.

20 MR. PECK: Realizing it's a  
21 ridiculous question, I'm not going to instruct you not  
22 to answer if you have a way to answer.

23 A. Did I hear you right that I know  
24 of --

25 Q. Yes.

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B24 20309

1 A. -- that might have been offered  
2 to go to Florida as an inducement to buy generics?

3 Q. Right.

4 A. None that I know of.

5 Q. To your knowledge then the only  
6 possible candidates that might have received that  
7 offer would have been Revco and Trade Development  
8 Corporation; is that right?

9 MR. PECK: Objection.  
10 Absolutely mischaracterizes the entire prior  
11 testimony.

12 Q. Well, there's been an offer --  
13 we know there's been an offer to TDC, hasn't there?  
14 It says right here in the presentation.

15 A. For what purpose?

16 Q. For any purpose? "As a bonus,  
17 Brown & Williamson would take the top two sales person  
18 and manager of each of the two winning houses on a  
19 golf outing to Florida."

20 Now, that was offered to TDC,  
21 wasn't it?

22 A. Yes.

23 Q. And you're not aware of any  
24 other account that was offered to, are you?

25 A. No, I'm not. That it was

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824 20310

1 offered to?

2 Q. Yes.

3 A. No, I am not.

4 Q. It was a special offer made to  
5 TDC?

6 MR. PECK: Objection. That's  
7 not what<sup>s</sup> he said.

8 Q. Is that right?

9 A. No, that is not correct.

10 Q. It's an offer that was made  
11 available to all customers on a fair and proportionate  
12 basis?

13 A. I have no idea.

14 Q. Okay. It may have been offered  
15 to Allen Jones on a fair and proportionate basis?

16 A. I don't know. I know that Allen  
17 Jones went to Florida.

18 Q. Okay. Directing your attention  
19 to page 087380, this appears to be a generic  
20 remittance advice; is that right?

21 A. Correct.

22 Q. And somewhere on this generic  
23 remittance advice or on the following pages, which are  
24 also generic remittance advice, does it show what the  
25 total quantity of generic cigarettes purchased by TDC

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824 20311

1 was in some time period?

2 MR. PECK: Are you asking if  
3 there is a number that sums it up as opposed to --

4 MR. RASMUSSEN: Yeah.

5 MR. PECK: -- all of the total?  
6 I mean the document speaks for itself.

7 MR. RASMUSSEN: I'm just trying  
8 to understand the document.

9 A. I do not see a total.

10 Q. The generic remittance advice  
11 indicates that a check was paid to TDC on or about  
12 July 16, 1985, for \$134,805; is that correct?

13 MR. PECK: Is that correct that  
14 that's what the document shows?

15 Q. Is that correct what it shows,  
16 yes?

17 A. It says a payment date of  
18 7-16-85, total amount of check, \$134,805.60.

19 Q. So presumably that would have  
20 been the rebates for the second quarter of 1985; is  
21 that your understanding?

22 MR. PECK: Objection to the  
23 form.

24 A. If I look at this document, I  
25 might presume that.

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B24 20312

1 Q. Okay. But I mean you know what  
2 the document is because you had it in the  
3 presentation, didn't you?

4 A. This was not a part of the  
5 presentation.

6 Q. Okay. The presentation ended at  
7 page 087379?

8 A. I believe so, yes.

9 Q. Okay. Then on page 08380 and  
10 the following pages, which are the generic remittance  
11 advice, have you ever seen that generic remittance  
12 advice before, or is this the first time?

13 MR. PECK: The one for this  
14 customer or --

15 Q. Yeah, this particular one?

16 A. I believe I have seen it before  
17 because I have used the numbers in the presentation.

18 Q. Okay. Let me show you a  
19 document which we will mark as Exhibit 21, which  
20 appears to be a handwritten draft of Exhibit 20  
21 starting with production number 134972 and running  
22 through production number 134987.

23 (Greenier Exhibit 21 was marked  
24 for identification.)

25 MR. PECK: Off the record.

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B24 20313

1 (Off the record discussion.)  
2 Q. I really don't have very much on  
3 this. I'm going to question you about Page 134985,  
4 and I'm going to question you about the first sentence  
5 on the page.  
6 A. Okay.  
7 Q. Is that a sentence you wrote?  
8 MR. PECK: Wait. You mean is  
9 that his handwriting?  
10 MR. RASMUSSEN: Yes.  
11 A. It appears to be, but I haven't  
12 read this whole document, just part of it.  
13 Q. What my question will be, and  
14 read the section, is what you meant by that first  
15 sentence on the top of the page?  
16 A. I'm going to read this whole  
17 piece because this is an added piece back here.  
18 Q. Okay.  
19 A. I can't read my own handwriting.  
20 Okay.  
21 Q. Do you understand the reference?  
22 A. Uh-huh.  
23 Q. Can you explain it?  
24 A. TDC had some of its distribution  
25 centers close, or that they consolidated into other

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824 20314

1 houses, and what I'm saying is so that it will appear  
2 fully credible is that I don't put a number in on a  
3 house that's closed and, in fact, it showed a down  
4 number.

5 Q. You just didn't want to be  
6 embarrassed in your presentation by having inaccurate  
7 information?

8 A. No, not so much that as I wanted  
9 to make sure my information was accurate, that I  
10 wouldn't ask a house to do something that was closed.

11 Q. I'll ask you to mark as Exhibit  
12 22 a document bearing production numbers 88774  
13 through 88781.

14 (Greenier Exhibit 22 was marked  
15 for identification.)

16 (Off the record discussion.)

17 Q. I'm going to question you about  
18 Paragraph 3, Paragraph 5, numbered Paragraph 3 and  
19 numbered Paragraph 5.

20 A. Okay.

21 Q. With respect to -- first of all,  
22 did you write Exhibit 22?

23 MR. PECK: Well, hang on,  
24 because Exhibit 22 is composed of at least two  
25 documents.

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824 20315

1 Q. Okay. Is Exhibit 22 a letter  
2 which you sent with some attachments to Mr. Heller at  
3 TDC corporation?

4 A. It appears to be, yes.

5 Q. Okay. And you wrote the first  
6 two pages, which is the letter?

7 MR. PECK: Hang on one second,  
8 please.

9 (The reporter read the record.)

10 A. These were sent to TDC. I don't  
11 know if they were sent as part of this.

12 MR. PECK: Okay. Just to clear  
13 up your identification question on 22, I think it's  
14 correct that the first two pages were sent to Mr.  
15 Heller. The other part of Exhibit 22 appears to have  
16 an indication it was sent to Mr. White of TDC. It's  
17 not necessarily part of one package; is that correct?

18 THE WITNESS: Correct.

19 Q. But it may have been part of one  
20 package?

21 A. I'm not really sure.

22 Q. Okay. In any event, all of the  
23 pages were eventually sent to TDC, maybe not in one  
24 envelope, but --

25 A. Yes.

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824 20316



1 Q. Okay. And you wrote the first  
2 two pages of the exhibit?

3 A. Yes, it appears I did.

4 Q. There's a reference in numbered  
5 Paragraph 3 to Brown & Williamson's -- to a Brown &  
6 Williamson selling manager who might be calling on the  
7 TDC houses to discuss kinds of programs that may be  
8 developed to assist TDC in reaching its goals. What's  
9 that in reference to?

10 A. Which part of it?

11 Q. Well, what were the goals, first  
12 of all?

13 A. With the increase through  
14 general sales by 20 percent.

15 Q. Okay. Did B&W devise a program  
16 for TDC to try to increase TDC's volume?

17 A. Who B&W?

18 Q. Anyone at B&W that you're aware  
19 of?

20 A. Other than what was our regular  
21 published fair and equal proportionate methods of  
22 doing business, not to my knowledge.

23 Q. You're not aware of any special  
24 programs?

25 A. No.

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824 20317

1 Q. Any special consumer promotions?

2 A. No, I'm not aware of that.

3 Q. But weren't all of the published  
4 programs already developed at the time of this letter?

5 MR. PECK: Published programs  
6 have changed over time. I don't know what you're  
7 getting at.

8 Q. Well, it seems to me that if  
9 Paragraph 3 were just referring to published programs,  
10 there wouldn't be a reference to kinds of programs  
11 which may be developed.

12 MR. PECK: I think you're  
13 talking about two different things.

14 A. I'm not sure what your question  
15 is.

16 Q. Well, were Brown & Williamson  
17 representatives going to call on the TDC houses to  
18 develop programs to develop -- to assist TDC?

19 MR. PECK: Are you talking about  
20 Brown & Williamson programs or TDC programs?

21 Q. Any programs?

22 A. My recollection is it's TDC  
23 programs.

24 Q. What TDC programs?

25 A. Such as the one that was

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B24 20318

1 outlined in document number 20.

2 MR. PECK: Exhibit 20.

3 A. Exhibit 20.

4 Q. I'll show you Exhibit 20 and ask  
5 you to identify the one that you're talking about?

6 A. Scenario one where the TDC  
7 houses could increase their price by 20 cents, keep 10  
8 and then pass 10 along to the houses.

9 Q. Okay. Was scenario one in  
10 Exhibit 20 a program which B&W suggested that TDC  
11 implement?

12 o MR. PECK: What do you mean by  
13 suggested they implement?

14 Q. Was it B&W's idea to have a  
15 promotion such as scenario one, or was it TDC's idea?

16 A. As my memory serves me, it was a  
17 joint idea.

18 Q. So you would have had prior  
19 meetings with TDC people before this presentation  
20 where you discussed possible joint programs?

21 A. Yes, sir.

22 Q. And the joint programs that you  
23 discussed are those stated in the various scenarios of  
24 Exhibit 20?

25 A. What joint programs?

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824 20319

1 Q. Well, you said you had a meeting  
2 with TDC people to discuss joint programs?

3 A. No, no.

4 MR. PECK: I don't think that's  
5 what he said.

6 A. No, that wasn't the question.

7 Q. Well, the question is on the  
8 record and the answer is on the record.

9 A. Well, can we have that back,  
10 please?

11 Q. You can hear it back, but it's  
12 on the record.

13 A. Okay.  
14 (The reporter read the record.)

15 Q. And what were those joint  
16 programs?

17 MR. PECK: I think we have been  
18 through this in circles already.

19 MR. RASMUSSEN: Would you like  
20 to testify?

21 MR. PECK: No. I'd like you to  
22 ask a question once and not be a smart -- you know the  
23 word that comes after smart in that usual comment.

24 The question has been asked and  
25 answered. He talked about programs he discussed

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824 20320

171

1 including scenario one and scenario two in Exhibit 20.

2 Q. Are those all of the programs  
3 you have ever discussed with TDC?

4 A. I'm not really sure.

5 Q. Have there been any other  
6 discussions about other programs besides those you  
7 have already discussed in Exhibit 20?

8 MR. PECK: You're talking about  
9 in the same time period or ever?

10 MR. RASMUSSEN: Ever?

11 MR. PECK: Through August 31.

12 A. I believe there have been.

13 Q. And indeed there's some in the  
14 same time period; is that right?

15 A. What same time period?

16 Q. As the time of Exhibit 20?

17 A. No, not necessarily, no.

18 Q. But prior to Exhibit 20 you had  
19 discussions with TDC?

20 A. Yes.

21 Q. About joint programs?

22 A. Yes. We alluded to one in a  
23 letter.

24 Q. And is every joint program that  
25 you discussed with TDC prior to that time either

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B24 20321

1 summarized in Exhibit 20?

2 MR. PECK: He answered that no  
3 already.

4 MR. RASMUSSEN: Okay. And now  
5 I'm trying to find out what the other programs were,  
6 and you said he's already answered that.

7 Q. What were the other programs?

8 A. One that I can remember in  
9 particular is top two in this exhibit.

10 Q. Which is Exhibit 19?

11 A. Yes.

12 Q. And that program was just to  
13 stock more B&W products?

14 A. For them to service retail  
15 stores with more B&W products.

16 Q. And that program and these two  
17 scenarios are the joint programs that you discussed  
18 with TDC?

19 A. That's some of them I guess. I  
20 don't know. I can't recall any other specific ones.

21 Q. Okay. Are you familiar with any  
22 other instances where B&W assisted an account in  
23 developing a program to increase the sales of B&W  
24 cigarettes?

25 A. I don't recall any that I was

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824 20322

1 involved with.

2 Q. Do you recall any that you  
3 weren't involved with?

4 MR. PECK: What do you mean by  
5 that?

6 Q. Do you recall any at all?

7 A. Off the top of my head, no.

8 Q. Now --

9 MR. PECK: Excuse me a minute.

10 (Discussion between the witness  
11 and his counsel.)

12 MR. PECK: Was your question --

13 MR. RASMUSSEN: Would you make  
14 note of the conference?

15 MR. PECK: I think there may be  
16 a confusion in your question as to whether it's  
17 limited to generics or all cigarettes, and whether it  
18 would include such things as account business reviews  
19 as we have seen some evidence of in the documents. I  
20 think the witness --

21 A. I'm assuming you're talking just  
22 about generics?

23 Q. Right.

24 A. To my knowledge at this point,  
25 no.

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B24 20323

1 Q. Okay. Directing your attention  
2 to page -- to Paragraph 5 of Exhibit 22, there's a  
3 reference in the second sentence from the end of that  
4 paragraph to an announcement of your incentive  
5 program. What incentive program is that?

6 MR. PECK: Hold it. The your  
7 since I think you're quoting obviously refers to TDC.

8 MR. RASMUSSEN: Correct.

9 A. As outlined in here.

10 Q. In here, you mean Exhibit 20?

11 A. Uh-huh.

12 Q. Do you know whether it was  
13 scenario one or scenario two that was announced?

14 A. I don't know if either one was  
15 actually announced.

16 Q. Do you know whether some TDC  
17 incentive program was announced?

18 A. To my knowledge, no. I really  
19 don't.

20 Q. Directing your attention to the  
21 next page of Exhibit 22, there's a reference to B&W  
22 discontinuing the filter label effective August 1,  
23 1985. Do you see that reference?

24 A. Yes.

25 Q. Did B&W do that?

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B24 20324



1 MR. PECK: You're saying on that  
2 day or approximately in that period?

3 Q. Approximately?

4 A. Somewhere in that time frame.

5 Q. Do you know why?

6 A. Due to the many labels that we  
7 had and the warning rotation for better manufacturing  
8 capability.

9 Q. Are you saying that B&W had too  
10 many labels and was trying to reduce the number of  
11 labels?

12 MR. PECK: I don't know what you  
13 mean by too many.

14 Q. Well, I can take that part out.  
15 Are you saying that -- was B&W trying to reduce the  
16 number of labels that it had at the time?

17 A. For better manufacturing  
18 capability, yes. That's outlined in Paragraph 3.

19 Q. By the way, have you heard  
20 any -- or do you have any information about whether  
21 Philip Morris will be introducing a black and white  
22 generic cigarette?

23 MR. PECK: Objection. You can  
24 ask him the question as of his knowledge prior to  
25 August -- including and prior to August 31, '85.

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824 20325

1 MR. RASMUSSEN: Then the  
2 question is useless.

3 MR. PECK: That's right.

4 MR. RASMUSSEN: I ask it as of  
5 now.

6 MR. PECK: Ask it and you'll get  
7 an instruction not to answer. You know the cut off  
8 period that's been discussed among our two firms. You  
9 don't agree to it, but that's the position that's been  
10 taken throughout.

11 MR. RASMUSSEN: So you are  
12 instructing him not to answer that question?

13 MR. PECK: Put a full question  
14 if you want an official instruction on the record, but  
15 you know what's going to happen.

16 Q. Do you have any information  
17 about whether B&W -- excuse me -- do you have any  
18 information about whether Philip Morris is about to  
19 introduce a black and white generic cigarette?

20 MR. PECK: Instruct the witness  
21 not to answer since it calls for current information  
22 post August 31, 1985.

23 Q. Do you have any information with  
24 respect to Philip Morris possibly introducing a  
25 branded generic cigarette?

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1 MR. PECK: Same instruction.

2 Q. I'll ask the court reporter to  
3 mark as Exhibit 23 a document bearing production  
4 number 13345.

5 (Greenier Exhibit 23 was marked  
6 for identification.)

7 (Off the record discussion.)

8 Q. Have you seen Exhibit 23 before?

9 A. I don't recall it, no.

10 Q. Does the reference to prompt  
11 rebate mean anything to you?

12 A. I'm not really sure. It may be  
13 over the prompt signing bonus. I'm not sure.

14 Q. I'll ask the court reporter to  
15 mark as Exhibit 24 a document bearing production  
16 number 161350.

17 (Greenier Exhibit 24 was marked  
18 for identification.)

19 A. Okay.

20 Q. Have you seen this document  
21 before?

22 A. Yes.

23 MR. PECK: Are you talking about  
24 the written -- the handwritten part or just the typed  
25 part or both?

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CONFIDENTIAL MINNESOTA TOBACCO LITIGATION

- 1 Q. The typed part?
- 2 A. Yes.
- 3 Q. Did you and Mr. Dant prepare the
- 4 document?
- 5 A. I believe so.
- 6 Q. And you -- you prepared it on or
- 7 about August 9, 1984?
- 8 A. It would appear that way by the
- 9 date, yes. I don't remember the exact date.
- 10 Q. And you prepared it as a part of
- 11 your job at the time?
- 12 A. Yes.
- 13 Q. And to the best of your
- 14 knowledge it was accurate at the time it was prepared?
- 15 A. The best of my knowledge.
- 16 Q. The exhibit refers to an
- 17 operational plan and has a description of a
- 18 operational plan on Page 2. Do you see that?
- 19 A. Uh-huh, yes.
- 20 Q. Do you know whether that
- 21 operational plan was ever implemented?
- 22 A. I'm not really sure.
- 23 Q. Do you know whether -- are you
- 24 unsure because -- do you think any plan similar to it
- 25 was adopted?

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1 MR. PECK: In the same time  
2 period?

3 MR. RASMUSSEN: Yes.

4 A. I really couldn't state for  
5 sure.

6 Q. In other words, is your absence  
7 of certainty because some plan was adopted, but it  
8 might have been slightly different than the one that's  
9 outlined here?

10 A. No.

11 Q. You simply don't know whether  
12 any plan was adopted?

13 A. My memory isn't that strong to  
14 go back to that point and say that one was or was not.

15 Q. Okay.

16 A. Of any form.

17 Q. You proposed it to Mr. Sandefur,  
18 right?

19 A. No.

20 Q. No?

21 A. No.

22 Q. Who considered the proposal?

23 MR. PECK: Objection. Can't --  
24 he may not know who considered it. Why don't you try  
25 your prior question back?

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1 Q. Okay. Did you recommend that  
2 this operational plan be adopted?

3 A. I believe so.

4 Q. To whom did you make that  
5 recommendation?

6 A. Dick Blott.

7 Q. Did you have any meetings with  
8 Mr. Blott about the operational plan?

9 A. I believe so.

10 Q. And what was the substance of  
11 those meetings?

12 A. Reference -- to the best of my  
13 memory, referencing why we needed to do it.

14 Q. Was a consensus reached at the  
15 meeting that there was a need for some sort of program  
16 to respond to what Liggett was allegedly doing?

17 A. I don't really remember that a  
18 consensus was reached.

19 Q. Did Mr. Blott raise any  
20 objections to the proposed operational plan?

21 A. I remember the meeting. I don't  
22 really remember a lot of the details.

23 Q. Are you aware of any B&W program  
24 that was ever adopted whereby -- where the program  
25 just applied to accounts that already were stocking

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1 B&W generics and not to accounts that weren't stocking  
2 B&W generics?

3 MR. PECK: I don't understand  
4 that in the least.

5 A. I don't understand it.

6 Q. The operational plan that's  
7 outlined in Exhibit 23 is a plan for stickering and  
8 other promotions aimed at accounts already stocking  
9 B&W product, isn't that right?

10 A. It appears that way, yes.

11 Q. Okay. Are you aware of any  
12 program that was ever implemented that was directed  
13 just at accounts stocking B&W generics?

14 MR. PECK: Objection. That's --  
15 let me hear the question back to make sure it's got  
16 the problem I think it does.

17 (The reporter read the record.)

18 Q. I'm talking<sup>f</sup> about B&W programs.

19 MR. PECK: Yeah, but I don't  
20 know what you mean by directed at. Obviously, if  
21 you're giving someone a rebate on a product they buy,  
22 somebody who doesn't buy the product isn't getting the  
23 rebate.

24 Similarly, with this proposal it  
25 somebody doesn't have the product, if they do have the

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1 product, whether they bought it before or after at the  
2 time of this program, they would get a sticker. I  
3 don't understand what you can mean by a question like  
4 that.

5 Q. Can you answer the question?

6 A. No, because in my mind you would  
7 only give stickers, our money and stickers to a  
8 customer that had our product.

9 Q. Are you familiar with any  
10 occasion where B&W has ever offered stickering to an  
11 account as an inducement for the account to carry B&W  
12 generics?

13 MR. PECK: When you say an  
14 inducement --

15 Q. That you will carry the product  
16 and you will sticker it?

17 MR. PECK: I think that was  
18 asked and answered this morning for the time period  
19 prior to August 31.

20 A. Are you asking me if I know of a  
21 particular account that it was done for?

22 Q. Let me put it this way. Are you  
23 familiar with any instance where stickering was  
24 offered to an account that didn't already have B&W  
25 generic cigarettes in stock at the time the stickering

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1 was proposed?

2 A. I'm not familiar with any.

3 Q. Okay. Now, certainly it's  
4 possible that stickering could be used as an  
5 inducement for an account to carry product?

6 MR. PECK: Anything is possible.

7 Q. Okay. So, therefore, I return  
8 to my question. Are you aware of any B&W program  
9 which has been aimed just at accounts already stocking  
10 B&W generic cigarettes?

11 MR. PECK: I still don't  
12 understand what you're getting at, Garret.

13 THE WITNESS: Repeat that  
14 question, please?

15 (The reporter read the record.)

16 A. One that was implemented?

17 Q. Yes.

18 A. I don't know of any that was  
19 implemented.

20 Q. Okay.

21 A. I spoke about that a minute ago  
22 I thought.

23 Q. Okay. That's all I wanted.

24 A. Oh, okay.

25 Q. Okay.

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824 20333

1 (Off the record discussion.)

2 Q. Are you familiar with any  
3 program which B&W has implemented which has been  
4 directed only at the top ten accounts in terms of  
5 volume which stock B&W generic cigarettes?

6 A. I don't recall any.

7 (Off the record discussion.)

8 Q. I'm now going to turn my  
9 attention back to the DAIP program which we talked a  
10 little bit about this morning. I'm going to show you  
11 a document which I'll ask the court reporter to mark  
12 as Exhibit 25 bearing production number 12041 through  
13 12046.

14 (Greenier Exhibit 25 was marked  
15 for identification.)

16 (Off the record discussion.)

17 A. Okay.

18 Q. Have you ever seen that document  
19 before?

20 A. Yes, I have.

21 Q. Did you prepare it?

22 A. No.

23 Q. Do you know whether the document  
24 was sent to all domestic and special markets managers  
25 of B&W on or about mid December, 1984?

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1 A. By the dating and the title of  
2 it I could make that assumption.

3 Q. In the regular course of your  
4 business did you review the document at any point in  
5 time to see that it was accurate?

6 MR. PECK: Did he read it?

7 Q. Yes.

8 MR. PECK: That's a different  
9 question.

10 Q. Read it, did you read it?

11 A. Yes.

12 Q. Did you read it prior to the  
13 time it was sent to all domestic and special markets  
14 manager?

15 A. I believe I did.

16 Q. Okay. Did you have to sign off  
17 on it before it was sent out?

18 A. That's not standard procedure  
19 that I would have to, no.

20 Q. Okay. Is it fair to say that  
21 you were in charge of the program during 1985, the  
22 DAIP program?

23 A. How do you mean in charge of?

24 Q. You were responsible for its  
25 implementation?

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1 A. No.

2 Q. You were the -- you were the one  
3 that people would turn to if they had any questions  
4 about it?

5 A. They would -- field people would  
6 call me mainly because there's someone who put my name  
7 on it and said to call me.

8 Q. This is the program that the  
9 task force came up with; is that right, that we talked  
10 about earlier?

11 A. Yes.

12 Q. So it's a program that you  
13 helped create and were knowledgeable about?

14 A. Yes.

15 Q. Okay. The exhibit describes  
16 under the heading, "Here's how the program works" --  
17 you see that section of the exhibit?

18 MR. PECK: Starting on the  
19 middle to bottom of Page 1?

20 Q. Yes. Starting at the bottom  
21 third of the first page of the exhibit and running  
22 through the end of -- of the second page. I'd just  
23 like you to read that and tell me if it's an accurate  
24 description of how the program works, because really  
25 all I want to know is -- have some source of

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1 information so I can know how the program works, and I  
2 think that's faster to see if that's accurate than for  
3 me to --

4 MR. PECK: Let's limit the  
5 question to how it worked from January 1, '85, through  
6 August 31, '85.

7 MR. RASMUSSEN: I don't  
8 voluntarily so limit it, but --

9 MR. PECK: Without waiving your  
10 August 31 position?

11 MR. RASMUSSEN: Yes.

12 A. Okay. What was the question  
13 again?

14 Q. Is that an accurate description  
15 of how the program worked?

16 A. Some of it has not been  
17 completed yet --

18 Q. Okay.

19 A. -- but as outlined, yes, that  
20 was the way it was established to work, yes.

21 Q. You're not aware of any changes  
22 in it?

23 A. No, I'm not aware of any  
24 changes.

25 Q. Now, under the heading -- or

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824 20337

1 actually in the heading distributors and grocery  
2 wholesalers on the second page of the exhibit there's  
3 number SA-1A?

4 A. Yes.

5 Q. What does mean?

6 A. That was a flyer, SA-1A stands  
7 for flyer. It's further referenced later on on Page  
8 3, last paragraph.

9 Q. Okay. That was the flyer that  
10 would be sent to the distributors and grocery  
11 wholesalers explaining the program to them?

12 A. No.

13 Q. What was it?

14 A. It was a flyer that would be  
15 placed into a presentation brochure.

16 Q. For those kind of accounts?

17 A. Correct.

18 Q. Okay. And similarly SA-1B was a  
19 flyer that would be put into presentations for chain  
20 food, drug, direct vendors, military, and  
21 institutional accounts?

22 A. Correct.

23 Q. Now, directing your attention to  
24 I guess about five pages in, it's Page 12045, the  
25 question and answers.

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1 A. Yes.

2 Q. Under the first question and  
3 answer series, there's a -- across from the first  
4 bullet, it says, "If a customer simply chooses not to  
5 participate until later in the year, we will prorate  
6 his payment based on when he enters the program."

7 Has that, in fact, been  
8 implemented?

9 A. I really don't know because none  
10 of the payments have been done --

11 Q. Right.

12 A. -- or completed at this time.

13 Q. Has a decision been made whether  
14 to adopt a proration approach for customers that sign  
15 up in the mid year?

16 MR. PECK: I don't understand  
17 the question.

18 Q. Okay. Has a decision been made  
19 as to how to treat customers who sign up for the DAIP  
20 program in the middle of the calendar year?

21 A. Prior to August 31st?

22 Q. Yes.

23 A. I'm not aware of any change to  
24 this.

25 Q. So if an account were to stock

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1 the required brands and agree to do what he's supposed  
2 to do under the DAIP program, but if he only did that  
3 as of June 1985, would he -- could he reasonably  
4 expect to be paid a percentage rebate based on his  
5 purchases of product prior to June 1987?

6 MR. PECK: Objection to the  
7 form. I don't know what anyone outside of B&W could  
8 reasonably expect. There were also other people  
9 using --

10 Q. Let me rephrase it. When you  
11 say prorate on that page, 12045 of the exhibit, what  
12 do you understand that to mean?

13 A. My understanding?

14 Q. Yes.

15 A. His payment would start  
16 effective with the time that he entered the program.

17 Q. So he would not receive any  
18 payments for purchases he made prior to entering into  
19 the program; is that right?

20 A. Are you saying that he  
21 definitely wouldn't, or the way that this is lined  
22 out?

23 Q. The way this is lined out?

24 A. The way this is lined out,  
25 that's what I'm reading of it.

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824 20340



1 Q. Okay.

2 MR. PECK: Subject to second  
3 bullet under the first question, which at least had  
4 one variation to that.

5 Q. Okay. Let's look then at the  
6 second bullet. And can you explain that variation?

7 A. As outlined here?

8 Q. Yes.

9 MR. PECK: Wait a minute. The  
10 document speaks for itself.

11 MR. RASMUSSEN: Well, it may or  
12 it may not. I want this understanding.

13 MR. PECK: Why don't you ask  
14 him.

15 Q. Okay.

16 A. My understanding is that -- you  
17 know, by the example laid out, if we were -- if it was  
18 our problem, that the customer couldn't comply.

19 Q. Okay. Are you -- couldn't  
20 comply as of January 1, he shouldn't be penalized  
21 because it was your problem?

22 A. Correct.

23 Q. Are you aware of any instance  
24 where an account has been -- who did not sign up on  
25 January 1, 1985, was told that it would receive credit

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1 under the DAIP program for its purchases prior to the  
2 time it signed up in 1985?

3 MR. PECK: You're referring to  
4 through August 31, 1985, only?

5 MR. RASMUSSEN: Yes. Without  
6 waiving my position there.

7 A. An account in particular?

8 Q. Yes. Any account that's been  
9 told it could have retroactive coverage?

10 A. There may be some. I'm not sure  
11 of any account in particular.

12 Q. Are you aware of any discussions  
13 as to whether a customer who signs up in the middle of  
14 the year should be able to get retroactive coverage  
15 under the DAIP program?

16 MR. PECK: It's been asked and  
17 answered.

18 Q. Other than the one exception.

19 MR. PECK: It's been asked and  
20 answered even with regard to that exception, and I  
21 think you're going, Garret, into an area where this  
22 witness left responsibility for it around the  
23 beginning of '85, whether the first of the year or  
24 shortly before or shortly thereafter, and you can ask  
25 his understanding all you want, but it's not going to

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1 be your best witness on it.

2 MR. RASMUSSEN: Okay. Who would  
3 be?

4 MR. PECK: Don't ask me. It's  
5 not my deposition.

6 Q. Do you know whether there's been  
7 any discussion as to whether this program should apply  
8 retroactively?

9 A. There may have been. That I was  
10 personally involved in?

11 Q. Yes.

12 A. There may have been. Not  
13 necessarily to any one particular account, but in  
14 general.

15 Q. Has a decision been made yet as  
16 to whether to apply a policy of retroactive -- to  
17 retroactively apply the DAIP program for 1985 or to  
18 prorate it as outlined on Page 12045 of the exhibit?

19 MR. PECK: Objection. It's  
20 compound. I believe it was asked and answered.

21 Q. Can you answer it?

22 A. The payments haven't even been  
23 made yet.

24 Q. Right.

25 A. So I don't know as any decision

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1 has been made, and I have since long left that  
2 position.

3 Q. Who would be the best person  
4 to -- if you wanted to know the answer to that  
5 question, who would you ask?

6 A. I wouldn't know whether it would  
7 be on the finance side, on the sales side, on the  
8 marketing side. I wouldn't even begin to venture a  
9 guess. I don't know as any one person would make that  
10 decision.

11 Q. What was the time you sort of  
12 lost responsibility or lost touch with the DAIP  
13 program?

14 MR. PECK: Object to the form.  
15 You want to rephrase it correctly?

16 Q. Lost responsibility for it?

17 MR. PECK: You want to get rid  
18 of the word lost in there among other things? When  
19 did he stop having any responsibility for DAIP?

20 MR. RASMUSSEN: Sure.

21 A. Any responsibility at all?

22 Q. Yes.

23 A. When I moved into director of  
24 generic sales.

25 Q. Okay. And as of -- at least as

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1 of that time no decision had been made that you're  
2 aware of as to whether the program would apply on a  
3 prorata basis or a retroactive basis?

4 MR. PECK: Objection. You're  
5 beyond the time frame, and you have asked and answered  
6 it -- had it asked and answered through the August 31  
7 time frame already.

8 Q. Are you aware of any accounts  
9 complaining that the DAIP program forced them to buy a  
10 product that they otherwise would not have bought?

11 A. I may have heard that comment.

12 Q. Who did you hear it from?

13 A. I don't really recall. It's  
14 also outlined in this document.

15 Q. Uh-huh.

16 MR. PECK: Referring to Exhibit  
17 25, page 0012046, the first question.

18 Q. But you're not aware of any  
19 specific protests about the DAIP program that were  
20 made by any customers, are you?

21 A. No. I don't recall any.

22 Q. Are you aware of any discussions  
23 as to what impact the DAIP program would have on  
24 the -- on B&W sales of generic cigarettes?

25 MR. PECK: Could I have that

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1 question back, please?

2 (The reporter read the record.)

3 MR. PECK: Was he involved in  
4 any discussions? Discussions with who?

5 Q. I want to stick with that  
6 question.

7 MR. PECK: Objection to the  
8 form. You can answer it.

9 A. Discussions regarding just  
10 generics?

11 Q. No. Listen to the question.  
12 Can you read it back? And see if you can answer it.

13 (The reporter read the record.)  
14 A. In conjunction with our other  
15 brands I can remember different conversations.

16 Q. What conversations do you  
17 remember?

18 A. As part of the task force --

19 Q. Uh-huh.

20 A. -- the purpose of the program  
21 was to fill distribution voids on established brands  
22 and generic products.

23 Q. Presumably the program would  
24 have its greatest impact on those products that had  
25 the greatest distribution voids; is that right?

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CONFIDENTIAL MINNESOTA TOBACCO LITIGATION

1 MR. PECK: Objection.

2 Presumably? Objection to the form.

3 A. Not necessarily.

4 Q. Why not?

5 A. Kool Filter King is our biggest  
6 brand style that we have. One distribution gap at  
7 wholesale<sup>o</sup> on that would fire all away any distribution  
8 gap we had with any other brand stock, or in some  
9 instances total brand families.

10 Q. But distribution gaps for the  
11 Kool brand were quite rare, weren't they?

12 o MR. PECK: What do you mean by  
13 quite rare, and why are we talking about nongenerics?

14 Q. In fact, are you aware of any  
15 distribution gaps for Kool? Was the task force aware  
16 of any distribution gaps for Kool?

17 A. Yes.

18 MR. PECK: Indeed you have  
19 already seen it in some of the documents today.

20 Q. For the whole Kool line or just  
21 for certain styles of Kool?

22 A. I don't know or recall of any  
23 for the whole Kool line, but some for certain<sup>o</sup> styles  
24 of Kool.

25 Q. Did the task force make any

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1 study of the distribution gaps which actually did  
2 exist?

3 A. Yes.

4 Q. Did you prepare a written -- was  
5 that a written study?

6 A. No. Clarify study.

7 Q. Does the task force obtain  
8 information about distribution gaps?

9 A. Yes.

10 Q. And did you obtain that  
11 information in writing?

12 A. Yes.

13 Q. And you tried to determine the  
14 extent of distribution gaps for particular products  
15 manufactured by B&W?

16 A. Yes.

17 MR. RASMUSSEN: We haven't seen  
18 that document. It would be called for I think, and  
19 I'd ask you to check on that for us.

20 MR. PECK: I don't know whether  
21 it's called for or whether it's been produced. I'll  
22 take the request under advisement, and we can discuss  
23 it at a later time.

24 MR. RASMUSSEN: Okay.

25 Q. With respect to the DAIP

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1 program, are you aware of B&W assigning priority to  
2 certain brands that should be pushed under the  
3 program?

4 MR. PECK: Objection to the form  
5 of the question. The way you put it it's assuming a  
6 fact not in evidence. Nonawareness could mean  
7 nonawareness of something that is being done, and  
8 that's not what I presume you're trying to say, so why  
9 don't you rephrase it.

10 A. You're going to have to, or  
11 she'll have to read it back because I can't remember  
12 it.

13 Q. Okay. As part of the  
14 implementation of the DAIP program, were brand styles  
15 ever identified as ones that should be pushed or given  
16 priority?

17 MR. PECK: I don't know what you  
18 mean by pushed or given prior to. You can answer if  
19 understand it.

20 A. I'm going to make an assumption  
21 that I know what you're talking about.

22 MR. PECK: Don't assume it  
23 because you and Garret have to be saying the same  
24 thing, and the record has to be clear enough so the  
25 Judge can understand it, too.

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1 A. Okay. I won't then. I'm not  
2 sure what you're talking about.

3 Q. Were priorities assigned to any  
4 of the brands as part of the DAIP program?

5 MR. PECK: Again objection to  
6 the term priorities, which I don't think we understand  
7 what you're talking about. I certainly don't.

8 A. Priorities as you're saying it,  
9 you're saying that would only fit in my recollection  
10 of the program towards distribution and out of stock  
11 drives.

12 Q. o What do you mean?

13 A. As one of the prerequisites of  
14 the program, or one of the criteria, performance  
15 criteria of the program, on document 25, Page 2, under  
16 distributor/grocery wholesaler segment, fourth bullet  
17 down, perform two, distribution of out of stock brand  
18 drives annually on those brand sales specified by  
19 Brown & Williamson management.

20 Q. Okay.

21 A. Understanding that distribution  
22 and out of stock drives were retail distribution and  
23 out of stock drives.

24 Q. Is there a written document  
25 which shows which brand styles were specified by B&W

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1 management for various customers?

2 A. For various customers?

3 Q. Or for any customers?

4 A. There may have been one written  
5 for all customers.

6 Q. Okay.

7 A. I'm not really sure.

8 Q. Are you familiar with any other  
9 context in which brands were categorized as priority  
10 or not priority for purposes of the DAIP program?

11 MR. PECK: What do you mean by  
12 priority, Garret?

13 MR. RASMUSSEN: I'm just  
14 commenting on his word.

15 A. Repeat the question, again.

16 (The reporter read the record.)

17 A. Not that I recall.

18 Q. Let me show you a document which

19 I'll ask the court reporter to mark as Exhibit 26.

20 Ask you if you have ever seen that document before?

21 (Greenier Exhibit 26 was marked  
22 for identification.)

23 MR. PECK: For the record it  
24 bears Bates numbers 083802 through 804.

25 A. Okay.

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824 20351

1 Q. Have you seen this document  
2 before?  
3 A. Yes.  
4 Q. Did you prepare it?  
5 A. Yes.  
6 Q. Sometime in 1985?  
7 A. Yes.  
8 Q. Okay.  
9 A. No.  
10 Q. Probably late '84?  
11 A. Probably late '84. It may have  
12 been early '85. I'm really not sure of the exact  
13 timing on it.  
14 Q. Okay. And you prepared this as  
15 part of your DAIP responsibilities?  
16 A. Yes.  
17 Q. Okay. And you're not aware of  
18 any inaccuracy in it?  
19 A. No, I'm not.  
20 Q. Okay. Directing you to issue  
21 two, there's a reference to adjustments that -- on the  
22 last two lines -- adjustments that we may have made  
23 such as Peoples' Drugs where proper retail distribution  
24 versus wholesale distribution will qualify them for  
25 the program.

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824 20352

Q1 Can you explain that reference?

2 A. Yes. And it was also addressed  
3 in the questions in document number 25, I believe.

4 And it deals mainly with an  
5 account that would maintain proper retail distribution  
6 of our brand styles while not buying the product  
7 directly<sup>u</sup> from us utilizing a secondary supply to put  
8 the product in place at retail.

9 Q. Uh-huh.

10 A. Therefore, their -- the retailer  
11 supplied by that particular account would not be  
12 limited to only those brand styles that were stocked  
13 in the house.

14 Q. Would not be limited to only  
15 those brands stocked in the house?

16 A. Correct. So that the retailer  
17 would not be at a loss for distribution, or more  
18 importantly Brown & Williamson would not be at a loss  
19 for distribution --

20 Q. I see.

21 A. -- at that retail level.

22 Q. So that retailer would have to  
23 find another wholesaler?

24 A. Not necessarily. In this  
25 particular case, we're talking Peoples' Drugstores,

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821 20353

1 which was supplying their own stores. But they had  
2 limited warehouse space, but were using secondary  
3 suppliers or other wholesalers to assist them in  
4 distribution to their stores.

5 Q. So stores that -- retail outlets  
6 that were using -- that were buying their B&W  
7 cigarettes from some wholesaler would not be limited  
8 to the products that were stocked by the wholesaler,  
9 they would still have to carry all of the products  
10 that were required for the DAIP program?

11 MR. PECK: Objection. Your  
12 question is long, and I think you are totally  
13 confused. You may ask a short question and not try  
14 to summarize his testimony. He has answered this  
15 issue already.

16 Q. With respect to Peoples' Drugs  
17 as mentioned here in the exhibit, were any special  
18 requirements imposed on Peoples' Drugs under the DAIP  
19 program?

20 A. Special requirements?

21 Q. Yes.

22 A. No.

23 Q. Was there any waiver for  
24 Peoples' Drugs for any of the requirements that were  
25 applied to other customers to be eligible for DAIP?

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824 20354

1 A. No waiver other than what we  
2 have already spoken to here --

3 MR. PECK: Which was available  
4 to all customers?

5 A. -- to all customers.

6 Q. Okay. The reference in issue  
7 two to Peoples' Drugs has nothing to do, does it, with  
8 certain -- with Peoples' being treated as a category  
9 of trade which would qualify for the approximately two  
10 cents per carton that came in under the DAIP, does it?

11 A. Versus what?

12 Q. Well, let me rephrase it. You  
13 stated earlier in the deposition that there's a -- on  
14 occasion a nongrocery wholesaler or distributor could  
15 qualify for a two cent per carton, approximately two  
16 cent per carton payment; do you recall that?

17 MR. PECK: Objection.  
18 Mischaracterizes his prior testimony. If you're  
19 asking does he recall that subject discussed before  
20 without regard to the accuracy of your summary of  
21 that, you can answer that.

22 A. Is that what you're asking?

23 Q. No, I'm asking my question as  
24 asked.

25 MR. PECK: Then objection.

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1 Asked and answered and is mischaracterizing the  
2 witness' prior testimony.

3 Q. Now, you can answer it.

4 MR. PECK: Read the question  
5 back.

6 (The reporter read the record.)

7 A. I don't remember making that  
8 exact statement, no.

9 Q. What's wrong with that  
10 statement, that summary?

11 MR. PECK: Objection. I instruct  
12 the witness not to answer that question. His  
13 testimony stands. I'm not having him grade your  
14 characterizations of it. He doesn't have to answer  
15 questions more than once.

16 MR. RASMUSSEN: There's no need  
17 to shout. I'm not hard of hearing.

18 MR. PECK: I'm not shouting,  
19 Garret.

20 MR. RASMUSSEN: Don't need to  
21 lose your temper.

22 MR. PECK: I'm not losing my  
23 temper.

24 MR. RASMUSSEN: Good.

25 Q. Now, apart from the accuracy of

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1 my question, do you remember the discussion we had  
2 about the possibility that certain classes of trade  
3 that were eligible for the one cent per carton payment  
4 under DAIP might be able to qualify for the two cent  
5 per carton DAIP?

6 MR. PECK: Objection. There is  
7 no one <sup>s</sup>cent or two cent DAIP. We have been through  
8 that before.

9 Q. Do you recall that?

10 A. There is no one cent or two  
11 cent. We stated that earlier.

12 Q. Okay. This is going to take  
13 some time I guess.

14 MR. PECK: I guess it will take  
15 some time until you ask the right question.

16 MR. RASMUSSEN: Okay. I'm  
17 prepared to stay.

18 MR. PECK: Off the record.

19 (Off the record discussion.)

20 Q. Does the reference in issue two  
21 of the exhibit have anything to do with Peoples' Drug  
22 qualifying for the DAIP program that would pay  
23 approximately two cents per carton?

24 A. I'm not really sure.

25 Q. Why aren't you sure?

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P24 20357

1 A. It may have to do with them  
2 qualifying for the one cent portion of it -- or the  
3 other class. There is no one cent and two cent.

4 MR. PECK: Garret, let me see if  
5 I can help you to shortchange this whole thing. It's  
6 relatively easy.

7 If you look at Greenier Exhibit  
8 25, Page 12045, question number two, "What if a chain  
9 account," which as I understand it is the lower  
10 bracket, "does not stock all required brands at their  
11 warehouse, but all required brands are stocked at  
12 retail, will he qualify for payment?"

13 And the document answers, quote,  
14 "Yes. For chain accounts we will base qualification  
15 on what is in retail distribution," end quote.

16 And then the next paragraph of  
17 that answer talks about verification.

18 That's what Mr. Greenier has  
19 been talking about with Peoples' Drug as I understand  
20 it.

21 Q. Has your counsel accurately  
22 summarized your understanding of Peoples' Drug  
23 reference?

24 A. Yes.

25 Q. Okay. Fine.

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1 MR. PECK: Maybe we will catch  
2 our planes yet.

3 Q. Now, directing your attention to  
4 the next page of the exhibit -- and we're on Exhibit  
5 26.

6 A. Uh-huh.

7 Q. There's a reference under the  
8 last recommendation on the page to setting parameters  
9 as to what brands styles should be pushed so as not to  
10 overload retail with nonpriority brand styles. What  
11 brand styles were the priority brand styles?

12 o MR. PECK: Objection.  
13 Mischaracterizes the document. There is no reference  
14 there to priority brand styles.

15 Q. Okay. Which brand styles were  
16 the nonpriority brand styles?

17 A. As it pertained to generics?

18 Q. Yes.

19 A. There were none.

20 Q. There were no nonpriority brand  
21 styles as pertains to generics?

22 A. Correct.

23 Q. Were all of the generics,  
24 therefore, brands that were to be pushed?

25 A. Not always.

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324 20359

1 Q. Some were, though?

2 A. At different points in time.

3 To the best of my recollection, to further assist  
4 this, it was always in conjunction with established  
5 brands as well if, in fact, generics were one of the  
6 priorities at that time.

7 Q. Did B&W identify brand styles  
8 that should be pushed as part of the DAIP program?

9 A. I seem to remember that we did.

10 Q. Was that in writing?

11 A. I believe it was. I'm not  
12 really certain, but I believe it was.

13 Q. And --

14 A. At least for one program, one  
15 portion of the DAIP program.

16 Q. And for that portion of the  
17 program were those brand styles to be pushed by all  
18 customers that were participating in the program?

19 A. No. Not for all customers.

20 Q. Okay.

21 A. There was only one class of  
22 customers or two classes of customers that  
23 participated.

24 Q. Okay. But for those two  
25 classes?

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1 A. Yes.  
2 Q. Okay. In other words, different  
3 brand styles were not identified as ones that should  
4 be pushed for individual accounts?

5 A. Correct.

6 Q. Okay.

7 MR. RASMUSSEN: I'll ask the  
8 court reporter to mark as Exhibit 27 document bearing  
9 production number 088744.

10 (Off the record discussion.)  
11 (Greenier Exhibit 27 was marked  
12 for identification.)

13 Q. Simply ask you whether you are  
14 familiar with Exhibit 27?

15 A. I don't remember it in  
16 particular. I see my name mentioned. I can't read  
17 that comment down below.

18 Q. Okay.

19 MR. PECK: Referring to the  
20 handwriting at the bottom right-hand of the page?

21 A. Yes, the handwriting.

22 Q. Are you aware of any accrual  
23 accounts that were kept -- or accrual procedures that  
24 were used in the DAIP program?

25 MR. PECK: Let me just note an

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1 objection. You're going way beyond generics in a lot  
2 of these questions on DAIP since it's a program that  
3 goes to branded cigarettes as well as to some extent  
4 generics.

5 As long as you're not going to  
6 use that as a waiver of our limitation I will --

7 MR. RASMUSSEN: Oh, no.

8 MR. PECK: As long as we are  
9 agreed that that will not be considered in any way a  
10 waiver of issues as to branded cigarettes which are  
11 not in this case, I will continue to allow the witness  
12 to answer on a question by question basis.

13 Would you just note Mr.  
14 Rasmussen's agreement?

15 MR. RASMUSSEN: Yes, I have no  
16 problem with that although I think the position is  
17 ill-founded.

18 A. Firsthand knowledge of an  
19 accrual process?

20 Q. Yes.

21 A. No. You know, this is obviously  
22 a finance document and --

23 Q. That's not your area of  
24 expertise?

25 A. No.

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B24 20362

1 Q. Okay.

2 A. No.

3 Q. Do you know whether DAIP  
4 expenses are treated as sales promotion nonspecific  
5 for management reporting purposes as the document  
6 suggests?

7 MR. PECK: I'm sorry, could I  
8 hear that question back?

9 (The reporter read the record.)

10 A. I believe that it did go under  
11 that budget center.

12 Q. Okay.

13 A. I'm really not sure.

14 Q. Okay. I'll ask the court  
15 reporter to mark as Exhibit 28 a document bearing  
16 production number 125144.

17 (Greenier Exhibit 28 was marked  
18 for identification.)

19 A. Uh-huh.

20 Q. Have you seen that document  
21 before?

22 A. I'm going to assume I may have  
23 seen it. It's to all field personnel, and I would get  
24 copies.

25 Q. Would you have reviewed it --

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824 20363

1 did you review it before it went out to the field  
2 personnel?

3 MR. PECK: He doesn't even know  
4 if he has seen it before.

5 Q. You don't doubt that it was sent  
6 to all field personnel, do you?

7 A. No, I really don't.

8 Q. Does this document refresh your  
9 recollection<sup>s</sup> as to whether a decision was made on  
10 whether to apply the DAIP program retroactively?

11 A. I see that statement there.  
12 Obviously the way this looks -- it says --

13 (Off the record discussion.)

14 Q. It it doesn't, it doesn't. I  
15 mean --

16 A. You know, it -- I'd say yes and  
17 I'd say no. It does only from the instance that --  
18 I'd have to say that I'm not really sure.

19 Q. Okay. Did you get any questions  
20 from the field on that issue?

21 A. Not that I remembeg. That  
22 doesn't mean that I didn't. I really don't remember.

23 Q. Is that your handwriting on the  
24 document?

25 A. No.

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624 20364<sup>c</sup>



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1 Q. Does that handwritten note mean  
2 anything to you?

3 A. I can't even read it. Ask Mr.  
4 Peck.

5 MR. PECK: I can't read it for  
6 sure either.

7 MR. RASMUSSEN: Does that mean  
8 anything to you, Mr. Peck?

9 MR. PECK: You save that for my  
10 deposition, Garret, which you have already threatened.

11 (Off the record discussion.)

12 Q. I show you a document that has  
13 been already marked as Tharaldson Exhibit 43.

14 A. Prior to yesterday -- and I'm  
15 just going through it again now -- I don't remember  
16 the document.

17 Q. Okay. Were you on a volume two  
18 committee?

19 A. Not to my knowledge.

20 Q. Does volume two mean anything to  
21 you?

22 A. (Negative headshake.)

23 Q. Project volume two?

24 A. No, sir.

25 Q. Did you work on any committee

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1 whose mission was to protect B&W black and white  
2 generics against competitive encroachment from  
3 existing and new competitors?

4 A. Not that I remember.

5 Q. Did you ever have any  
6 discussions with anyone about trying to differentiate  
7 B&W's black and white generic cigarettes?

8 MR. PECK: From what?

9 MR. RASMUSSEN: From anything?

10 MR. PECK: Objection to the  
11 question as vague.

12 A. Well, the question --

13 Q. From any other generic  
14 cigarettes?

15 A. Not that I remember.

16 MR. RASMUSSEN: Off the record.

17 (Off the record discussion.)

18 Q. I'll show you one other  
19 document, which we'll mark as Exhibit 29, which bears  
20 production numbers 133133 through 133137.

21 (Greenier Exhibit 29 was marked  
22 for identification.)

23 A. Again prior to yesterday I don't  
24 really recall the document.

25 Q. And this document does not --

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1 does this document refresh your recollection about any  
2 possible involvement in project volume two?

3 A. No.

4 Q. Okay. Let me show you a  
5 document which I'll ask the court reporter to mark as  
6 Exhibit 30 bearing production numbers 088739 through  
7 088742.

8 (Greenier Exhibit 30 was marked  
9 for identification.)

10 A. Okay.

11 Q. Have you seen this exhibit  
12 before?

13 A. This particular one?

14 Q. Yes.

15 A. I don't really remember this  
16 exact one, but possibly, yes.

17 Q. Do you receive regular  
18 memorandas from Jim Hite on competitive activity?

19 A. Yes.

20 Q. Are those memoranda restricted  
21 to competitive activity of Liggett & Meyer Tobacco  
22 Company?

23 A. No.

24 Q. You get reports on all  
25 competitors?

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1 A. (Affirmative nod.)

2 Q. Okay.

3 A. Yes.

4 Q. Do you monitor competitive  
5 activity -- or did you monitor competitive activity as  
6 part of your job as national accounts manager?

7 MR. PECK: What do you mean by  
8 monitor? Objection.

9 Q. Try to keep informed as to what  
10 competitors were doing?

11 MR. PECK: How?

12 MR. RASMUSSEN: I think  
13 that's -- that's all I have to do.

14 A. I was informed through these  
15 types of memorandum.

16 Q. How often did Jim Hite send you  
17 a competitive activity memoranda during 1985?

18 A. It varied.

19 Q. Was Jim Hite's primary  
20 responsibility to obtain data on what competitors were  
21 doing and report it to you?

22 A. No.

23 Q. Okay.

24 MR. RASMUSSEN: I'll show you a  
25 document which has been marked Hildreth Exhibit 7,

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1 and I'll ask you if you have ever seen that document  
2 before?

3 A. The question was?

4 Q. Have you seen that document  
5 before?

6 A. I believe I have.

7 Q. Do you know whether Mr. Hildreth  
8 presented this document to any customers?

9 A. I don't know for sure, no.

10 Q. Did you ever talk to Mr.  
11 Hildreth about this document?

12 A. Yes.

13 Q. What was his -- on how many  
14 occasions?

15 A. One and possibly two.

16 Q. Okay. What was the substance of  
17 the first occasion when you spoke to him?

18 A. To ask him for the document.

19 Q. Why did you ask him for the  
20 document?

21 MR. PECK: Let me back up a  
22 minute. When was this? Or to put it another way, was  
23 it before or after August 31, '85?

24 THE WITNESS: Before August 31.

25 MR. PECK: Okay.

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824 20369

1 A. What was your question again,  
2 I'm sorry?

3 Q. Do you recall why you asked him  
4 for the document?

5 A. I believe because someone else  
6 had asked me to get it from him.

7 Q. Did he give you the document?

8 A. He sent me a copy of it.

9 Q. After you got a copy of the  
10 document, did you speak to him about it?

11 A. I'm not sure that I spoke to him  
12 about this document or whether or not it was done  
13 elsewhere.

14 Q. What do you mean by whether or  
15 not it was done elsewhere?

16 A. Whether or not he made any other  
17 presentations similar to this or, in fact, if this one  
18 was done.

19 Q. You never asked him if he made  
20 these presentations?

21 A. No.

22 Q. Did you speak to Mr. Hildreth  
23 about whether he had authority to make offers such as  
24 this?

25 A. I don't recall, no.

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224 20370

1 Q. Did you ever comment on the  
2 choice of words apparently used by Mr. Hildreth in  
3 this document?

4 MR. PECK: Did he ever comment  
5 to Mr. Hildreth?

6 Q. Yes.

7 A. I may have. I really don't  
8 remember.

9 Q. Do you recall ever telling him  
10 that he used a poor choice of words in this document?

11 A. I may have. I don't remember  
12 exactly.

13 Q. At the present time do you think  
14 he did use a poor choice of words in this document?

15 A. In my opinion?

16 Q. Yes.

17 A. Yes.

18 Q. And which words are the poor  
19 choice of words?

20 A. Exclusively.

21 Q. And why do you think that's a  
22 poor choice of words?

23 A. Because the way it could be read  
24 versus the potential way that he meant it may be two  
25 different things.

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824 20371

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1 Q. Do you have any understanding of  
2 what he meant when he used it?

3 A. Not really, no.

4 Q. Okay.

5 A. I wasn't present when he used  
6 it.

7 MR. PECK: If he used it?

8 A. If he used it.

9 Q. Did you ever ask him what he  
10 meant when he used it, if he used it?

11 A. I don't recall asking.

12 Q. Did Jerry Hildreth report to you  
13 at all -- report to you in 1984?

14 A. No.

15 Q. Did you have any responsibilities  
16 over him?

17 MR. PECK: What do you mean by  
18 that?

19 Q. In 1984?

20 MR. PECK: Objection. What do  
21 you mean by responsibilities over him?

22 Q. If you felt that Mr. Hildreth  
23 had done something wrong, were you in a position in  
24 1984 to discipline him?

25 MR. PECK: Objection. I don't

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824 20372



1 know what you mean. The man didn't report to him. I  
2 don't understand what you're getting at.

3 A. On an organizational chart he  
4 did not report to me. Could I discipline him?

5 Q. Yes.

6 A. He didn't report to me.

7 Q. So, therefore, the answer to my  
8 question is no?

9 A. Correct.

10 Q. Okay. It's not so hard.  
11 Do you recall anything more  
12 about any discussions you may have had with Mr.  
13 Hildreth about this exhibit?

14 A. No, I really don't.

15 Q. Have you discussed this exhibit  
16 with anyone other than Mr. Hildreth?

17 A. I don't recall discussing it  
18 with anyone.

19 Q. Did you tell anyone -- do you  
20 recall telling anyone at any time other than today  
21 that Mr. Hildreth used a poor choice of words in this  
22 document?

23 MR. PECK: Objection. He just  
24 said he doesn't recall talking to anyone about this.

25 Q. Okay. No?

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CONFIDENTIAL MINNESOTA TOBACCO LITIGATION

1 A. No.  
2 Q. Okay.  
3 MR. PECK: How much more have  
4 you got?  
5 MR. RASMUSSEN: Three documents.  
6 (Off the record discussion.)  
7 Q. Show you a document that I'll  
8 ask the court reporter to mark as Exhibit 31, a  
9 document bearing production number 088822.  
10 (Greenier Exhibit 31 was marked  
11 for identification.)  
12 A. Okay.  
13 Q. Have you ever seen that exhibit  
14 before?  
15 A. I seem to remember it.  
16 Q. Is this a document which you  
17 received on or about January 29, 1985?  
18 A. I'm going to assume it is  
19 because it's dated.  
20 Q. Okay. Do you know what space  
21 mizers are?  
22 A. Yes.  
23 Q. Do you know whether space mizers  
24 were used for generic cigarettes in 1985?  
25 A. I don't know for sure, no, I do

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CONFIDENTIAL MINNESOTA TOBACCO LITIGATION

1 not.

2 Q. Do you know whether space mizers  
3 were charged to code 464-10-0171 in 1985?

4 A. I don't know for sure.

5 Q. Other than this document?

6 A. No.

7 Q. Okay. Do you know whether any  
8 of the costs of space mizers have been budgeted to  
9 generics?

10 A. I am not sure.

11 Q. Okay.

12 A. Space mizers were not part of my  
13 responsibility.

14 Q. Do you know why you received a  
15 copy of this document, if you did?

16 A. Yes.

17 MR. PECK: Because Mr. Criss  
18 sent it to him. Objection to the form of the  
19 question.

20 Q. Why would that be?

21 A. Because I managed permanent  
22 merchandising contracts as well, which space mizers  
23 were used for.

24 Q. Okay. I'm going to show you  
25 Exhibit 14 which we have previously marked today. At

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B24 20375

1 a page 070719 there's a picture of a floor display.

2 Did you have any responsibility for those floor  
3 displays?

4 A. Prior to August 31st?

5 Q. Yes.

6 A. No.

7 Q. Do you know whether those floor  
8 displays were given to customers of generic cigarettes  
9 by B&W prior to August 1985?

10 A. I believe they were.

11 Q. Okay.

12 A. You're talking retail customers?

13 Q. Yes.

14 A. I believe they were.

15 Q. In other words, not charged, not  
16 sold to the retail customers?

17 A. Again, I'm not sure, but I  
18 believe they were given.

19 MR. RASMUSSEN: Off the record.

20 (Off the record discussion.)

21 MR. RASMUSSEN: I'd ask the  
22 court reporter to mark as Exhibit 32 a document  
23 bearing production numbers 127575 and 127576.

24 (Greenier Exhibit 32 was marked  
25 for identification.)

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824 20376

1 Q. Do you know whose handwriting  
2 that is, Mr. Greenier?

3 A. I'm not positive.

4 Q. Whose do you think it is?

5 A. It looks like Don Bores.

6 Q. Okay. Have you ever seen that  
7 document before?

8 A. Prior to yesterday?

9 Q. Yes.

10 A. No.

11 Q. I take it you saw a lot of  
12 documents yesterday?

13 MR. PECK: Okay. Note the  
14 laughter.

15 Q. Are you familiar with a value  
16 for money task force?

17 A. Familiar?

18 Q. Yes.

19 A. In that I have heard of it?

20 Q. Yes.

21 A. Yes.

22 Q. Did you serve on it?

23 A. No.

24 Q. Have you had any discussions  
25 with anyone at B&W about line simplification, generic

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B24 20377

1 line simplification?

2 A. Generic line simplification?

3 Q. Yes.

4 A. Yes.

5 Q. With whom have you discussed  
6 that subject?

7 A. Jerry Anders, Lanny Butler  
8 Danny Dant, Harvey Kerr, possibly Charlie Middleton.

9 Q. Have you discussed that issue on  
10 a number of occasions?

11 MR. PECK: Remember we're still  
12 talking pre August 31, '85.

13 A. I believe -- I can vaguely  
14 remember one.

15 Q. Okay. What's the substance of  
16 the discussion that you vaguely remember?

17 A. How would we narrow down our  
18 generic lines given that we had just acquired the GPC  
19 trademark.

20 Q. Was there a consensus that the  
21 product line should be narrowed down?

22 A. Yes.

23 Q. Why?

24 A. The manufacturing capacity.

25 Q. It's more efficient to

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B24 20378

1 manufacture fewer lines?

2 A. Not necessarily.

3 Q. What do you mean when you just  
4 said manufacturing capacity?

5 A. If you could have one long run  
6 of one brand style versus numerous short runs of  
7 numerous brand styles, the one long run of one brand  
8 style is far more efficient, the down time and  
9 changing equipment around.

10 Q. Have you discussed with anyone  
11 the number of private label generic cigarettes that  
12 B&W -- the number of -- strike that.

13 Have you had discussions with  
14 anyone about the number of private label brand styles  
15 that B&W should market?

16 A. I don't recall discussions on  
17 private labels.

18 Q. Do you recall any --

19 A. Pre August 31st?

20 Q. Yes. Do you recall any  
21 discussions of line simplification with respect to  
22 private label generics?

23 A. No.

24 (Off the record discussion.)

25 MR. RASMUSSEN: I'll ask the

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B24 20379

1 court reporter to mark as deposition Exhibit 33 a  
2 document bearing production number 078016.

3 (Greenier Exhibit 33 was marked  
4 for identification.)

5 A. Okay.

6 Q. Have you ever seen that exhibit  
7 before?

8 A. I don't recall it.

9 Q. Do you recall discussing Grand  
10 Met's divestiture or possible divestiture of Liggett  
11 with anyone?

12 A. Possibly.

13 Q. Do you recall discussing that  
14 prior to July 1, 1984?

15 Q. Prior to the lawsuit?

16 A. I don't remember. I'm not for  
17 sure. I vaguely remember a hallway conversation about  
18 a Wall Street Journal article. That's why I said  
19 possibly. I don't know the time frame.

20 Q. Do you recall any discussions  
21 with anybody about whether B&W's introduction of  
22 generic cigarettes could expand the generic category?

23 A. I don't recall any.

24 Q. Do you recall any discussions  
25 the substance of which was that B&W did not want to

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B24 20380



1 see the generic category expanded?

2 A. I don't recall any.

3 Q. As director of generic sales who  
4 reports to you?

5 MR. RASMUSSEN: I'll ask for a  
6 waiver. I think that question is fairly harmless.

7 MR. PECK: If you're just asking  
8 for organization chain at the moment without waiving  
9 anything, I'll let him answer.

10 Q. Yes.

11 A. Ed Philpott and Cindy Stevens.

12 Q. What is Ed Philpott's title?

13 A. He works for me. Manager,  
14 generic support services.

15 Q. What's Cindy Stevens' title?

16 A. Secretary.

17 Q. And who do you report to, Mr.  
18 Greenier?

19 A. Jerry Anders.

20 Q. What's his title?

21 A. Director, special markets.

22 MR. RASMUSSEN: Your witness.

23 MR. PECK: No questions.

24 MR. RASMUSSEN: Thank you very  
25 much, Mr. Greenier, for your patience and time. The

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B24 20381

1 deposition is concluded.

2 (Witness excused.)

3 \* \* \* \* \*

9 STATE OF KENTUCKY )

10 COUNTY OF OLDHAM )

11 I, MARCIA KUCHENBROD, a notary public within  
12 and for the State at Large aforesaid, do hereby  
13 certify that the foregoing is a true, correct and  
14 complete transcript of the deposition of GERALD A.  
15 GREENIER, taken at the time and place set out in the  
16 caption, including objections and remarks of counsel;  
17 that the deposition was taken pursuant to notice; that  
18 the said witness was duly sworn before giving his  
19 deposition; that the appearances were as set out in  
20 the caption hereof; and that the said deposition was  
21 taken down by me in stenotypy and afterwards transcribed  
22 on a computer under my direction.

23 I further certify that I am neither attorney  
24 or counsel for, nor related to or employed by any of  
25 the parties to the action in which this deposition is

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824 20382

1 taken; and further, that I am not a relative or  
2 employee of any attorney or counsel employed by the  
3 parties hereto, or financially interested in the  
4 action.

5 Given under my hand as notary aforesaid,  
6 this the 8th day of February, 1986.

7 My commission expires March 14, 1989.

10

11

12

MARCIA KUCHENBROD, C.P.,

13

Court Reporter and Notary Public

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State of Kentucky at Large

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B24 20383

1 I, the undersigned, GERALD A. GREENIER, do  
2 hereby certify that I have read the foregoing  
3 deposition and that, to the best of my knowledge, said  
4 deposition is true and accurate (with the exception of  
5 the following corrections listed below):

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GERALD A. GREENIER

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B24 20384

235

1 STATE OF \_\_\_\_\_

2 COUNTY OF \_\_\_\_\_

3 Before me, the undersigned Notary Public  
4 within and for the above-named county and state, on  
5 the \_\_\_\_\_ day of \_\_\_\_\_, 1985, personally  
6 appeared GERALD A. GREENIER and acknowledged the  
7 execution of the foregoing document.

8 My commission expires: \_\_\_\_\_

9

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Notary Public

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